

1 UNITED STATES OF AMERICA
2 UNITED STATES DISTRICT COURT
3 CENTRAL DISTRICT OF CALIFORNIA
4 WESTERN DIVISION

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6 HONORABLE CONSUELO B. MARSHALL,
7 UNITED STATES DISTRICT JUDGE PRESIDING
8 - - -

9 GLOBEFILL INCORPORATED, a)
10 Canadian corporation)
11) CERTIFIED COPY
12 PLAINTIFF,)
13) CV 10-2034 CBM
14 VS.)
15)
16 ELEMENTS SPIRITS, INC., a)
17 California corporation, and)
18 KIM BRANDI, an individual,)
19)
20 DEFENDANTS.)
21 -----)

22 TRIAL DAY ONE
23 REPORTER'S TRANSCRIPT OF PROCEEDINGS
24 TUESDAY, MARCH 14, 2017
25 A.M. SESSION
LOS ANGELES, CALIFORNIA

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1 LOS ANGELES, CALIFORNIA; TUESDAY, MARCH 14, 2017

2 A.M. SESSION

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4
5 (IN THE PRESENCE OF THE
6 PROSPECTIVE JURY PANEL.)

7 THE CLERK: Ladies and gentlemen of the jury,
8 please rise and raise your right hand.

9 Do you solemnly swear that you will well and truly try
10 the cause now pending before this Court, and a true
11 verdict therein render according to the evidence and the
12 instructions the Court, so help you God?

13 THE JURORS: Yes.

14 THE CLERK: Thank you. Please have a seat.
15 You may be seated. Item No. 5, Civil Case 10-2034:
16 Globefill Incorporated versus Elements Spirits.

17 Counsel, state your appearances at the
18 lectern.

19 MR. BERG: David Berg for Globefill, with an
20 announcement of ready, Your Honor.

21 THE COURT: Good morning.

22 MR. BERG: Good morning.

23 MS. BIVENS: Good morning, Your Honor.

24 Zenobia Harris Bivens for Globefill.

25 THE COURT: Good morning.

1 MR. VERA: Good morning, Your Honor.

2 Hernan Vera for the plaintiff as well.

3 THE COURT: Good morning.

4 MR. FAY: And, Your Honor, Michael Fay for
5 the plaintiff.

6 THE COURT: Good morning.

7 All right. Defense.

8 MR. HUMMEL: Good morning, Your Honor.

9 Keith Hummel for Elements Spirits, one of
10 the defendants.

11 THE COURT: Good morning.

12 MR. RAFFERTY: Good morning, Your Honor.

13 Tom Rafferty for Elements Spirits as well.
14 Good morning.

15 THE COURT: Good morning.

16 MS. RETTIG: Good morning, Your Honor.

17 Rebecca Rettig for defendant Elements
18 Spirits, as well.

19 THE COURT: Good morning.

20 MR. MILLER: Good morning, Your Honor.

21 Jon Miller for defendant Kim Grace -- Kim
22 Brandi.

23 THE COURT: Good morning.

24 So we have prospective jurors seated out in
25 the audience. And good morning to you as well. So let

1 me explain what we're going to be doing this morning.

2 So I realize that jurors are instructed to
3 report fairly early on Tuesday, so I think I probably
4 saw some of you in line when I arrived here a little
5 after seven. So what that tells me is that we need a
6 lunch break, so we will be breaking for lunch. So we're
7 going to have about a two-hour session.

8 So it's now 10:30. So at 12:30, we will
9 recess for lunch. You will have an hour and a half.

10 Now, some of you may feel generally feel we
11 don't need an hour and a half. We generally allow an
12 hour and a half on Tuesday because there are other
13 jurors in the courthouse all trying to maybe eat at the
14 same place, or even if you go outside. And you can
15 certainly do that. And if it's beautiful, I encourage
16 you to do that, take a little walk. You will have
17 enough time. The places close to the courthouse also
18 may be crowded, and it may take longer to get your
19 lunch. So the break will be about an hour and a half.

20 Then you will return and we'll continue the
21 jury selection process, and that is at process we are
22 engaging in this morning, trying to select a jury for
23 the case.

24 So before we even start that process, before
25 you meet the attorneys and hear about the nature of the

1 case and hear the names of witnesses who may be
2 testifying, this is a case that we are going to have
3 some days that we will not be in session. So I want to
4 advise all of you about that.

5 The counsel already know. But for some of
6 the prospective jurors, you may be available this week
7 but only available this week. So you may not be able to
8 serve on a case that's going to have some periods of
9 recess. So I want you to listen, and if you have
10 questions about what day of the week is that or anything
11 like that, I can answer those for you.

12 And I'm just going to ask to see a show of
13 hands, once I give you the schedule, of anyone who
14 thinks it would cause an undue hardship if you were
15 asked to serve on a case, understanding the schedule.

16 One of the other things that you need to
17 know, I am only talking about the period of time that
18 evidence will be presented and closing arguments will be
19 made. How long it takes the jury to deliberate in any
20 given case is for the jury to decide. So I don't try to
21 include that in my time estimate.

22 So even after all the evidence is in, you've
23 heard the arguments of the attorneys, the instructions
24 on the law, then the case is given to the jury, you
25 commence deliberating. So that may consume more time,

1 short amount, a long amount. But there's no way for me
2 to include that in the time estimate, but I want you to
3 consider what may be going on in your private lives that
4 may create an undue hardship for you if you have to
5 spend additional time.

6 So first, I have the benefit of the calendar
7 and you don't, unfortunately, but I can tell you what I
8 expect will happen this week.

9 I need counsel to just advise me in my order
10 to counsel indicating what days the Court would be in
11 session. I indicated that I actually do have about two
12 hours on Thursday morning. It may be that you will --
13 you may need that time because there is a witness that
14 you scheduled maybe for Thursday morning, that witness
15 is only available for Thursday morning and we could
16 complete that witness in two hours. I don't know if
17 that's the case.

18 But if counsel could advise me, do we need
19 to be in session on Thursday morning to accommodate a
20 witness' schedule?

21 MR. BERG: Your Honor, we have a witness who
22 is unable to come next week because of the illness of
23 his wife. And I'm going to have to check and see if we
24 can bring him Thursday instead of Friday, as we had
25 planed.

1 THE COURT: Okay.

2 MR. BERG: And I'll let the Court know as
3 soon -- and in fact, I can have someone check on that
4 now, if I might, from the back.

5 THE COURT: And do you think that we could
6 complete that witness' testimony, all of the testimony
7 that that witness may be providing, within a two-hour
8 period?

9 MR. BERG: No question, Your Honor.

10 THE COURT: All right. And I don't know if
11 defendants know who this person is, but counsel can just
12 off the record tell them who it is. And if they feel
13 that we could complete in two hours, then we will plan
14 on a Thursday morning session.

15 MR. BERG: Thank you, Your Honor.

16 MR. HUMMEL: Your Honor, Mr. Berg just
17 whispered the name to me, and we certainly could do that
18 witness in two hours.

19 THE COURT: All right. So for the jurors,
20 so we will be in session today. We will be in session
21 tomorrow. Tomorrow being Wednesday.

22 We will have at least a two-hour session on
23 Thursday. There will be no session on Friday of this
24 week. And Friday happens to be the 17th of March. No
25 session.

1 Then when we get to next week, we will not
2 have a session on Monday. Generally not in session with
3 jurors on Monday. So no Monday session. Monday is the
4 20th.

5 There will be a session on Tuesday, which is
6 the 21st. We will be in recess on Wednesday, which is
7 the 22nd. So the jury would not be reporting on that
8 day. We will be in session on the 23rd, which is next
9 Thursday, and the 24th, which is next Friday.

10 If necessary -- and I don't know that it
11 will be necessary -- we may have presentation of
12 evidence that last week in March, the 28th, which is
13 Tuesday. The 29th, which is Wednesday. 30th is
14 Thursday. 31st is Friday.

15 So I don't know that we will need all of
16 this time, but those are dates that the jury would have
17 to be available, if you are selected for this case.

18 As I've indicated, if we gave the case to
19 the jury, say, on the 31st of March, the jury's heard
20 all the evidence, heard the arguments, heard the
21 instructions of law, then the jury would commence
22 deliberating maybe that same day, the 31st.

23 If you reached a verdict, then you would be
24 excused. If you have not reached a verdict, and needed
25 additional time to deliberate, you would be returning on

1 Tuesday, April 4th. That is the first week in April.
2 And then the jury will have all the time that it needs.
3 I don't have any other days that we would not be
4 available.

5 So that is the proposed schedule at this
6 time. So, therefore, the first question that I would
7 like to have you answer is if that is the schedule,
8 those are the days that you will be here, those are days
9 that you will not be here, would that schedule cause an
10 undue hardship on anyone?

11 I'm not now talking about hours. I'm only
12 talking about days. And of course we're not in session
13 on weekends, nor would we in session on holidays. But I
14 don't think there are any holidays during this period.

15 So first, do you want me to repeat the days
16 again? Anybody not quite clear on what these days are?
17 Just raise your hand and I can repeat.

18 Okay. A couple of people.

19 So again, listen carefully. So today is the
20 14th of March, it is Tuesday. We will be in session all
21 day today.

22 Tomorrow, the 15, Wednesday, we will be in
23 session.

24 Thursday, the 16th, at least two hours. And
25 you may be excused after a two-hour session on Thursday.

1 No session on Friday of this week,
2 March 17th.

3 The next session would be next Tuesday,
4 March 21st.

5 No session on the 22nd of March, which is
6 next Wednesday.

7 We will be in session on March 23rd and
8 March 24th. That's the Thursday and Friday of next
9 week.

10 If necessary, in order to complete the
11 presentation of evidence, the session would be Tuesday,
12 March the 28th; Wednesday, March 29th; March 30th;
13 March 31st.

14 If the case were given to the jury on the
15 31st, then the jury would be deliberating and maybe
16 would go into the first week of April.

17 As I said, I can't tell you whether that
18 would be necessary, because the case would be yours and
19 you would deliberate as long as you needed to in order
20 to reach a verdict or otherwise be excused.

21 Everybody understand the days that you will
22 be here and the days that you would not be here? If
23 there is anybody who doesn't, raise your hand.

24 Okay.

25 Now what I would like to see is just a show

1 of hands. I don't need to know at this point why.

2 But is there anyone who believes it would
3 create an undue hardship on you if you were selected as
4 a juror in this case and expected to be here on the days
5 indicated?

6 So I'm going to ask the clerk to do -- keep
7 your hands up, please. The clerk will count, and also
8 the clerk will tell me how many jurors we have.

9 And counsel may look at the audience too, to
10 the extent that it's important for you to know who
11 thinks it would cause an undue hardship.

12 So the clerk tells me -- so you may put your
13 hands down now. We only had 20 jurors to report, and 12
14 of those have indicated it would be an undue hardship.

15 The next question I would ask the clerk, do
16 we have additional jurors in the jury assembly room?
17 And you may need to make a call and you may need to
18 inquire as to how many we have.

19 And for counsel, the Court's intent would be
20 to select eight jurors. So could I ask counsel to just
21 approach sidebar. I don't need everyone. I just need a
22 decision maker.

23 (SIDEBAR.)

24 THE COURT: New space and trying to get
25 accustomed to it. So 12 persons indicated it would

1 cause an undue hardship, and we only have 20, so that
2 would only leave us with eight. There is no room for
3 challenges for cause or preponderances.

4 I understand there are 36 additional jurors
5 that could be brought up to the courtroom. I would ask
6 the same question. I don't know how many of them we
7 would lose. So my question of you, I can excuse the 12
8 without questioning them or I can question them
9 individually. So I just don't know if you have any
10 preference.

11 MR. BERG: I have no preference.

12 THE COURT: Anybody?

13 MR. HUMMEL: I don't have any preference.

14 MR. RAFFERTY: No preference.

15 THE COURT: You saw the ones that would be
16 an undue hardship. Sometimes counsel just wants to see
17 who they are. For whatever reason that might be, you
18 want to know that. So I think I will excuse these 12.
19 I will ask the jurors to -- office to send us more.

20 I ask the same question, if it looks like we
21 are going to lose the same number, then I'll have to do
22 it individually, unless you have some other suggestions.

23 MR. BERG: I have a question. I can't tell
24 by my chart who's sitting where. There's a woman
25 sitting to my left, who I thought was number one, but

1 the next name is a man, and there's a woman sitting next
2 to it. Is there a way for us to tell?

3 THE COURT: I don't know.

4 MR. BERG: How can we tell who's sitting
5 where? We have a list, but we don't know who is sitting
6 where.

7 THE CLERK: It's just the list.

8 MR. HUMMEL: Randomly.

9 THE COURT: The way they are seated in the
10 courtroom has no significance how they would be seated
11 in the box.

12 Is that right, Yolanda.

13 MR. BERG: At some point.

14 THE COURT: Of course.

15 THE CLERK: It will be announced.

16 MR. BERG: We could take the first 12.

17 THE COURT: We'll see.

18 My plan would be at this point, without
19 listening to why they believe it would be an undue
20 hardship, I would just be excusing those 12 people and
21 ask the jury office to send more jurors up.

22 I probably ask to send us a bigger panel.
23 They only sent us 20. I would ask at least 36.

24 MR. MILLER: Your Honor, with the scattered
25 schedule, I have a problem with the 24th. If it's a day

1 of trial that -- that I could probably -- relatively
2 small role, and I don't want to stop our momentum. I
3 have post-trial motions down in San Diego, and it's
4 pretty important to my client that I be there.

5 THE COURT: You may not be there that day,
6 so we'll see.

7 MR. MILLER: We'll see. If it's not -- my
8 client is not the witness and not closing, I might be
9 able to bring someone up here to occupy my seat.

10 THE COURT: I'm not going to include that
11 day. We may not have a session.

12 MR. MILLER: If it was anything other than
13 post-trial motions, I have no one there but me.

14 THE COURT: Okay. All right. Thank you.

15 No objection to just excusing those 12 who
16 raised their hands and get some more up here?

17 MR. HUMMEL: I think there is no objection.

18 MR. BERG: No objection.

19 THE CLERK: Walk around.

20 (SIDEBAR CONCLUDED.)

21 THE COURT: We are back on the record.

22 So the clerk tells me there are 12 of the
23 prospective jurors who have raised their hand, as it
24 would cause an undue hardship for you to work the
25 schedule that I've indicated. So at this point, I'm

1 going to excuse the 12, and I'm not going to ask for
2 reasons why.

3 We will get more jurors from the jury
4 office. I will make the same inquiry. If it looks like
5 we're losing too many, then I will have to ask each
6 juror what your reason is. So I may decide that it's
7 not a basis for the excuse, whatever that reason is.
8 But for these 12 I'm not going to inquire.

9 You will be going back to the jury office,
10 and they will send -- or the jury assembly room -- and
11 they will send additional jurors to this courtroom. So
12 now I just want to make sure that we don't have more
13 than 12. So could I ask those on the first row to stand
14 who raised your hand. Just that first row.

15 Okay.

16 All right. Second row, please, if you
17 raised your hand please stand. The first row may be
18 seated.

19 Thank you.

20 Next row, please.

21 Okay. Was that where all of our jurors were
22 seated, Yolanda, in that section?

23 Okay.

24 All right. So it looks to me like 12. Is
25 that the count that the clerk got when they stood?

1 THE CLERK: I see 13.

2 THE COURT: You got 13. So is there someone
3 who stood who did not raise your hand initially?

4 Okay. Apparently not.

5 So it would be 13. So the clerk will get
6 your names. You will be going back to the jury assembly
7 room. You're not excused from jury duty. You may be
8 sent out on another case, and the time for that case may
9 be even different from this one. Longer. Different
10 days. And you may not be excused from that case. So I
11 am only excusing you from courtroom, this case, and you
12 will go back to the jury assembly room. Thank you.

13 So I will ask the clerk get their names, or
14 whatever you need to do.

15 THE CLERK: Don't leave yet. Just a moment.

16 THE COURT: So she's going to make a phone
17 call first before you leave. And I think she will have
18 to identify you in some way so we'll know who's here and
19 who's not here.

20 So I can just share with you, we had a jury
21 trial the last couple of weeks, and so we had some days
22 in, some days out. That jury actually liked it. It
23 permitted people to take a break from listening to
24 evidence, do something else, then come back another day.
25 So it's not necessarily bad, it's just a question as to

1 whether you would be available.

2 Those jurors have been excused. I think the
3 clerk has notified the jury office that we need
4 additional jurors, and they should send us at least 20.

5 So while we're waiting for those other
6 jurors, there isn't anything that we can do right now.
7 So if anybody wishes to stand and stretch, feel free to
8 do so. If anyone needs to step out of this room, you
9 may step out. We hope the other jurors will report
10 momentarily.

11 THE CLERK: This Court is in recess.

12 (RECESS TAKEN.)

13 THE CLERK: Ladies and gentlemen of the new
14 panel, please rise and raise your right hand.

15 (PROSPECTIVE JURORS SWORN.)

16 THE PROSPECTIVE JUROR: Yes.

17 THE CLERK: Thank you.

18 THE COURT: Good morning to those of you who
19 are just joining us. I will be addressing you
20 momentarily.

21 I want to ask the clerk, how many additional
22 jurors did we get?

23 And then how many from the previous group
24 before we excused?

25 THE CLERK: Seven.

1 THE COURT: We have 27 total. For those who
2 are just joining us -- so this is not intended for those
3 of you who were already in the courtroom earlier, you've
4 heard this speech. So I'm just really talking to the
5 new jurors.

6 Without really saying anything about the
7 case, what I really want you to know is about the
8 schedule. And so the questions that you will be
9 answering is, if you work the schedule based upon the
10 information that I will provide, will it cause an undue
11 hardship for you just because of the schedule?

12 So I'm going to tell you the days when we
13 will not be in session, and I will ask you just to
14 listen, and then you will be able to tell me, This may
15 or may not cause an undue hardship to me. And the
16 reason that I'm raising the question is because we won't
17 be in session every day. That means that we will go
18 into future weeks that you may not be available or you
19 may.

20 So we are in session today, and we will
21 remain in session today. Today is March the 14th. We
22 will also be in session tomorrow, March the 15th. We
23 will have a session on Thursday, March the 16th, but
24 probably not all day. But we will not be in session
25 Friday, March the 17th. So that is the first day. No

1 session Friday, March the 17th.

2 We will next be in session next Tuesday,
3 which is March the 21st. We will not have a session on
4 Wednesday, March the 22nd.

5 But we will be in session next Thursday, the
6 23rd, and next Friday the 24th.

7 If necessary, and I don't know that it will
8 be, but for planning, if necessary, we will be in
9 session the last week of March. March the 28th is
10 Tuesday. The 29th, the 30th and the 31st.

11 Now, at some point the jurors will have
12 heard all the evidence in the case. And the argument of
13 the attorneys and the instructions of law. At that
14 point, we give the case to the jury to commence
15 deliberating.

16 I have not included in that -- deliberation
17 time has not been included in any of the dates that I
18 have given you, because I don't know how long it will
19 take you to deliberate. That is for the jury to decide
20 once you get the case.

21 So if we were to give the case to the jury
22 on March 31st or even sooner, the jury would commence
23 deliberating. I don't know how long that would take.

24 So that's something that you need to
25 understand, that I can't tell you when you will be

1 excused from this case. There is no way for me to know
2 that.

3 All I can tell you are the days that we will
4 be in session or not in session.

5 So first question I would ask, and that's
6 for those new jurors who have just joined us, not the
7 seven who were here earlier. For those who just joined
8 us, could I see a show of hands first if you understand
9 the schedule? Anybody who didn't hear or you're just
10 unclear, then raise your hand.

11 So we have one person that I think is
12 saying, I don't understand the schedule.

13 THE JUROR: No, I do. I missed one date. I
14 have March 17th and March 22nd off.

15 THE COURT: Let me repeat. We will not be
16 in session on March the 17th. We will not be in session
17 on March the 22nd, which is next Wednesday. Those are
18 the only dates that --

19 THE PROSPECTIVE JUROR: Okay. I got them
20 both.

21 THE COURT: I think everybody understands
22 when we will be here and when we will not be here.
23 Obviously not here on the weekends. Not here on
24 holidays, but I don't think we have any holidays within
25 that period.

1 So my next question is: Is there anyone who
2 believes it would cause an undue hardship on you if you
3 were asked to serve, knowing the schedule of the case?

4 And I just want to see hands. So some
5 examples of undue hardship may be things like: I have a
6 vacation planned, I have already paid for it. The
7 ticket is not refundable. So I would lose money. That
8 may -- that's just kind of an example of an undue
9 hardship.

10 Now, could I see a show of hands who think
11 it would cause an undue hardship. And I will just ask
12 the clerk to help me count.

13 THE CLERK: Eight.

14 THE COURT: I think we can start. Some of
15 you might be excused during this process for various
16 reasons. But at this point, I'm not going to excuse
17 anyone else. So we are going to start jury selection.

18 At this time, the clerk will call your name.
19 And when your name is called, you are going to occupy
20 the jury box that you see to my left that has the gray
21 chairs. And the clerk will tell you where the first
22 juror to be selected will be seated.

23 And she will also designate where other
24 jurors may be seated within the box.

25 So for now when your name is called you will

1 take a seat in the jury box.

2 THE CLERK: Bruce, Batten, B-A-T-T-E-N. Come
3 this way. All the way to the first row. And go all the
4 way to the back.

5 Jennifer Martinez, M-A-R-T-I-N-E-Z.

6 Sanjay Vasandani, V-A-S-A-N-D-A-N-I.

7 THE COURT: Could the clerk spell the name
8 again, please.

9 THE CLERK: Vasandani, V-A-S-A-N-D-A-N-I.

10 Joshua Aaron Massi, M-A-S-S-I.

11 Kevin Van, V-A-N.

12 Rosa Hernandez, H-E-R-N-A-N-D-E-Z.

13 Raymond Gross, G-R-O-S-S.

14 Cindy Benadivez, B-E-N-A-D-I-V-E-Z.

15 THE COURT: Spell the name, again, please.

16 THE CLERK: B-E-N-A-D-I-V-E-Z.

17 THE COURT: So we now have eight prospective
18 jurors in the box. And I will give some information to
19 all of you. So my comments are intended for all; those
20 who are in the audience, those who are in the box,
21 because you are all prospective jurors on this case.

22 I will have some questions that I will
23 propound to those who are seated in the box.

24 For those of you who are in the audience,
25 not in the box, you must listen to every question that's

1 being asked. You must be prepared to answer that
2 question if asked of you. Because generally what we
3 find is the first eight who are seated are not
4 necessarily the same eight who will constitute the jury
5 in the case.

6 So some of those who are seated in the box
7 now may be excused for various reasons. And one of you
8 will replace the one who is excused.

9 So that it is not necessary for me to repeat
10 every question that I have propounded to the eight in
11 the box, I ask that all of you in the audience just
12 listen to the questions. You have pencil and paper so
13 you may make notes. So that if you chosen to be seated
14 in the box, you will be able to tell me your response to
15 some of these questions. So it is important that you
16 listen.

17 We are going to break for lunch and --
18 because I know that you arrived here very early, and you
19 are accustomed to having lunch, then you need to break
20 for lunch. I will decide just when to do that. Just
21 trying to be as efficient as I can. The lunch break
22 will be about an hour and a half.

23 You will return from lunch back to this
24 courtroom and we will continue the jury selection
25 process.

1 So first let's start with: Who are the
2 attorneys in the case? Who represents the parties?
3 Just so that you can see them. The purpose for that
4 would be for you to tell me whether you recognize any of
5 them as someone that you know. You may have read about
6 them or just seen them and think you know them. And I
7 will be inquiring of the eight in the box as well as in
8 the audience whether you believe that you know or
9 recognize any of the lawyers who are going to be
10 representing the parties in the case.

11 I can tell you it is a civil case, and
12 that's why we have seated eight, as opposed to a
13 criminal case where we would seat 12.

14 So I will hear the introductions now. Just
15 indicate your name. You'll step to the lectern for that
16 purpose. Try to make sure that those in the audience
17 see you as well as those in the box. And you'll
18 indicate the parties that you represent.

19 MR. BERG: Your Honor, ladies and gentlemen
20 of the panel, my name is David Berg. And I represent a
21 company called Globefill which is owned by Danny Aykroyd
22 and John Alexander, the two gentlemen here.

23 MS. BIVENS: Hi, my name is Zenobia Harris
24 Bivens, and I also represent the plaintiffs, Dan Akroyd
25 and John Alexander and Globefill.

1 MR. FAY: Hi. My name is Mike Fay. I also
2 represent Globefill with my colleagues here.

3 MR. VERA: Good morning, my name is Hernan
4 Vera. I also represent the plaintiff Globefill.

5 MR. HUMMEL: Good morning, ladies and
6 gentlemen. His name is Keith Hummel, I represent the
7 defendant Elements Spirits.

8 MS. RETTIG: Good morning, everyone. My
9 name is Rebecca Rettig. I also represent defendant
10 Elements Spirits in this matter.

11 MR. RAFFERTY: Good morning, everyone. My
12 name is Tom Rafferty. I also represent Elements Spirits
13 in this matter.

14 MR. MILLER: Good morning. My name is John
15 Miller. I represent the individual defendant Kim
16 Brandi.

17 MR. HUMMEL: One more, Your Honor.

18 MR. DENNING: Good morning, ladies and
19 gentlemen. My name is Nathan Denning, and I also
20 represent the defendant Elements Spirits.

21 THE COURT: So now you have heard the names
22 of those attorneys who will be representing the parties
23 in the lawsuit.

24 And the clerk -- when the clerk called the
25 case, and you may not have noticed, the plaintiff in the

1 lawsuit is Globefill Incorporated. And so you have met
2 those attorneys. The defendant in the law suit,
3 Elements Spirits, Inc. and Kim Brandi. B-R-A-N-D-I.

4 So those are the parties to this lawsuit.
5 And I will inquire, any of the prospective jurors think
6 you recognize any of these attorneys, just the attorneys
7 who have introduced themselves, as someone that you may
8 know, you read something about them, you've heard
9 something about them.

10 First the eight in the box, raise your hand
11 if you recognize them as someone that you know or you
12 think you know something about them.

13 THE COURT: Okay. We have one of our
14 prospective jurors. And if we can give the portable
15 mic. And I ask the juror to state his name for the
16 record. Spell the last name. And then tell us who you
17 recognize.

18 THE PROSPECTIVE JUROR: My name Bruce
19 Batten, B-A-T-T-E-N.

20 And I recognize some of the plaintiff from
21 this morning when I came into the building. Then the
22 reason why I'm speaking out is because I heard them make
23 some comments regarding a protestor that was outside the
24 building that I didn't find very appropriate.

25 THE COURT: So I may ask you further

1 questions about that later.

2 THE PROSPECTIVE JUROR: Sure. Thank you.

3 THE COURT: Anybody else in the box that you
4 think you may recognize those lawyers who have
5 introduced themselves?

6 How about in the audience? Anybody think
7 you recognize any of the lawyers? You might have seen
8 them this morning when you entered the building, or you
9 heard their name someplace associated with something.
10 Or you've just seen them here in the courthouse. Anyone
11 in the audience? Raise your hand if that's the case.

12 No hands are raised.

13 THE COURT: So now I'm going to read to you
14 a statement of the case, it is just a statement that's
15 intend to help you understand the nature of the case so
16 that you can understand why certain questions may be
17 asked.

18 So the plaintiff filed this lawsuit against
19 the defendants for trade dress infringement. This means
20 that the plaintiff is claiming legal rights in its trade
21 dress, which is a skull-shaped bottle, and that the
22 defendants have violated the plaintiffs' rights in that
23 trade dress. This is what the plaintiff claims.
24 Specifically, the plaintiff is claiming the defendants
25 are selling their products, products that belong to the

1 defendants in a manner likely to cause confusion as to
2 the origin or quality of the plaintiffs' or defendants'
3 goods among consumers.

4 In other words, one the issues is, the way
5 that the products are being displayed or sold, is it
6 likely to cause confusion among consumers?

7 The defendants deny the plaintiffs' claims
8 and assert that their bottle is not likely to cause
9 confusion as to the origin or quality of the plaintiffs
10 or the defendants' goods among consumers.

11 That is the statement of the case, that's
12 not evidence. I have read that statement to you.
13 Hopefully it helps you understand the nature of this
14 case and why certain questions may be asked at this
15 time.

16 Next, I would ask -- and we'll start with
17 the plaintiffs -- and the reason we start with the
18 plaintiffs, is the plaintiff brought the lawsuit, so
19 they have the burden of proof. So that is a starting
20 place for us.

21 The Court would like for counsel to state
22 the names of those persons who may be called as
23 witnesses in the case. He's just reading off the list
24 of names. Or any names that may be mentioned during the
25 trial.

1 So this person may not be called as a
2 witness, but the name is going to be mentioned. And the
3 purpose for this is I'll make the same inquiry of you.

4 First, those in the box I'll ask: Do you
5 recognize any of these names as someone that you may
6 have heard something about, read about or even know?
7 Sometimes names are just common names. So there might
8 be several people that have that same name, and that
9 person may not be associated with this case in any way.

10 But if you recognize the name, then I would
11 want you to tell me "I recognize that name." Then I
12 would probably ask you to describe that person that you
13 believe may be associated with that name, or tell me why
14 you know that name or recognize that name.

15 And you will tell me that. And then I'll be
16 able to tell you it is not the same person or maybe it
17 is the same person.

18 So we'll start with the plaintiff, the
19 plaintiff will read the names of those who you expect
20 will be testifying at trial or their depositions may be
21 used or their names may be referenced, even though they
22 are not going to be appearing here to testify.

23 MS. BIVENS: Thank you.

24 Dan Aykroyd, Jonathan Hemmi, Christina
25 Capaleni, Elise Glickman, Lucia Crone, George Alvarez,

1 David Brown, Dr. Bruce Issacson, Frederica Cabbo, Grace
2 Kim Brandi.

3 That's it, Your Honor.

4 THE COURT: So let me inquire first of the
5 12 in the box. And I will ask counsel: Did you include
6 the names of persons who may not appear as witness but
7 their depositions may be used or their names may be
8 mentioned by some other witness? Did you include those
9 names as well?

10 MS. BIVENS: Excuse me, Your Honor, can you
11 repeat that.

12 THE COURT: Did you include the names of
13 persons who may not be here as witnesses but their
14 depositions may be used or their names may be
15 referenced?

16 MS. BIVENS: Gilberto Escarcega. And also I
17 forgot to mention John Alexander.

18 THE COURT: Okay. So let me inquire. The
19 eight in the box, do any of you recognize any of these
20 names as someone who you might know?

21 We see one.

22 THE PROSPECTIVE JUROR: Or, Juror No. 1 and
23 Juror No. 3. So if we can get you the portable mic.

24 So generally I will ask you to respond, or I
25 will question you in the order in which you are seated.

1 So we'll go down first to the first juror to be seated.

2 Pass the mic all I way down.

3 And before you respond -- yes, Counsel

4 has --

5 MS. BIVENS: Sorry to interrupt. Raul

6 Marmol.

7 THE COURT: Okay. Could you spell the last

8 name.

9 MS. BIVENS: Yes. R-A-U-L, M-A-R-M-O-L.

10 THE COURT: So we have now an additional

11 name.

12 Juror No. 1, sir, which name did you

13 recognize as someone who you may know?

14 THE PROSPECTIVE JUROR: Not necessarily

15 know, but know of Dan Aykroyd.

16 THE COURT: Okay. And in what context have

17 you heard or read something about him?

18 THE PROSPECTIVE JUROR: From TV, movies, et

19 cetera.

20 THE COURT: And could you tell us how long

21 it's been since you either saw a movie or TV show or

22 heard this name mentioned?

23 THE PROSPECTIVE JUROR: Probably within the

24 year.

25 THE COURT: This year 2018 [sic] or --

1 THE PROSPECTIVE JUROR: 2016.

2 THE COURT: Thank you, sir. Could we pass
3 the mic down.

4 THE PROSPECTIVE JUROR: My answer's
5 generally the same. Recognizing Dan Aykroyd for the
6 same reasons and in the same time period.

7 THE COURT: Thank you.

8 And now we have Juror No. 4.

9 THE PROSPECTIVE JUROR: Same thing. Through
10 S&L and then recently through a Howard Stern interview.

11 THE COURT: So what's S&L?

12 THE PROSPECTIVE JUROR: Saturday Night Live.

13 THE COURT: And the time period about the
14 same? 2016?

15 THE PROSPECTIVE JUROR: Yes. Most recently
16 for an interview on Howard Stern.

17 THE COURT: Anyone else, now that you have
18 heard the response of some of the other jurors that
19 might cause some of you to think, okay, I've heard this
20 name as well.

21 Just raise your hand if that should be the
22 case.

23 All right. We're continuing.

24 Pass the mic, please. And state your name
25 for the record, please.

1 THE PROSPECTIVE JUROR: Rosa Hernandez.
2 Same reason. Because I know that he is an actor, and
3 I've seen movies.

4 THE COURT: Okay. You've seen him in
5 movies. You know he's an actor?

6 THE PROSPECTIVE JUROR: That's it.

7 THE COURT: When do you last believe that
8 you saw or heard something about him?

9 THE PROSPECTIVE JUROR: Maybe last year. I
10 think they were doing one of the movies on the --

11 THE COURT: 2017? Last year meaning 2017?

12 THE PROSPECTIVE JUROR: No. 2016.

13 THE COURT: 2016. Thank you.

14 Anybody else?

15 THE PROSPECTIVE JUROR: Yes. Raymond Gross.

16 THE COURT: And how do you recognize that
17 name?

18 THE PROSPECTIVE JUROR: Same reason. Movies
19 and Saturday Night Live.

20 THE COURT: And when do you believe you last
21 or heard the name?

22 THE PROSPECTIVE JUROR: 2016.

23 THE COURT: Thank you. Next, please.

24 THE PROSPECTIVE JUROR: Cindy Benavidez.
25 Same, as well. Movies, shows, whatnot. Last time I

1 heard of him, I believe it was two weeks, the House of
2 Blues.

3 THE COURT: Was that a television program or
4 you were in attendance?

5 THE PROSPECTIVE JUROR: No. It was on TV.
6 He was on there.

7 THE COURT: About two weeks ago?

8 THE JUROR: About two weeks ago.

9 THE COURT: Pass the mic back up. I think
10 our second juror to be seated decided that she too may
11 recognize the name. And if we pass anybody who now
12 thinks that you recognize the name, please indicate.

13 THE PROSPECTIVE JUROR: Same reason. And I
14 honestly couldn't tell you the last time I saw anything
15 with him, because I hardly watch TV.

16 THE COURT: But you associate him with
17 movies or some entertainment, media?

18 THE PROSPECTIVE JUROR: Yes.

19 THE COURT: How about the audience -- I'm
20 not going to question you individually, I just want to
21 see a show a hands of how many.

22 You may put your hands down.

23 If you are selected to be seated in the box,
24 then that would be the type of question. I've already
25 asked it. But you would give me your answer. And if I

1 were to follow through and ask more questions about it,
2 you would be prepared to do so.

3 So it's helpful to make a note that if you
4 are seated in the box, you want to advise me that you
5 recognize this name.

6 Any other names that were read that you
7 recognize as somebody you might know, you've heard that
8 name before, you associate that name with somebody or
9 something?

10 Those in the box? No hands.

11 In the audience? No hands.

12 So I would ask the defendants to do the
13 same.

14 What you are doing is stating the name of
15 witnesses that you expect to be called. If it is one of
16 the same names that plaintiff read, you don't need to
17 read it again. But the name may be referenced by
18 someone, even though that person isn't going to be here,
19 or it may be a deposition that's going to be presented.

20 MR. HUMMEL: Understood, Your Honor.

21 We have some of the same names. But the
22 unique names that are on my list are:

23 John Kennard.

24 THE COURT: Spell the lame name, please.

25 MR. HUMMEL: K-E-N-N-A-R-D.

1 Phillip Johnson.

2 THE COURT: Spell the last name, please.

3 MR. HUMMEL: That's J-O-H-N-S-O-N.

4 And Hal Poret, P-O-R-E-T.

5 THE COURT: Any additional ones?

6 MR. HUMMEL: Two more, Your Honor.

7 THE COURT: Okay.

8 MR. HUMMEL: Ray Ramos. And Thomas Zeigler.
9 Z-E-I-G-L-E-R.

10 THE COURT: Thank you. I will inquire.
11 Those seated in the box, recognize any of those names as
12 someone you may know? Or you may have read something
13 about them or heard that name before?

14 I see no hands.

15 How about in the audience? No hands.

16 So for defendant Brandi, any additional
17 names?

18 MR. MILLER: Yes, Your Honor. In addition
19 to Kim Brandi, I'm sure we'll be making reference to her
20 son Devon Chu, C-H-U.

21 THE COURT: Anybody recognize those two
22 names, Kim Brandi or Chu, Devon Chu as someone that you
23 may know?

24 In the box?

25 In the audience? No.

1 So now that we have -- you understand the
2 nature of the case. You've met at least the lawyers who
3 are going to be involved in the case. And you've heard
4 some of the names, those who may come to testify as
5 witnesses in the case or their names may be mentioned
6 during the course of the trial.

7 So there are some specific questions. I'm
8 going to propound those questions to the person seated
9 in the box, prospective jurors. But I ask that all of
10 you listen, take note, if any of the questions are such
11 that you would need to explain.

12 So one way of saying it would be, if your
13 answer would be yes to any of these questions, then I
14 would want you to share that information with me if you
15 are selected to be seated in the box.

16 First question: Do you personally know
17 anything about this case? And it is only based on what
18 you've heard here in the courtroom.

19 I read the statement of the case. Counsel
20 had read some names to you.

21 So for those in the box, do you personally
22 know anything about the case? If your answer is yes,
23 then raise your hand, and I will inquire further.

24 No one in the box.

25 Next question: Do you know plaintiff

1 Globefill Incorporated or the lawyers representing the
2 plaintiff? So I have already asked the lawyer question.

3 Do you know plaintiff Globefill
4 Incorporated?

5 Raise your hand if your answer is yes.

6 No hands.

7 Do you know defendants Elements Spirits
8 Inc., Kim Brandi? That entity and that individual. Do
9 you feel that you know them, raise your hand.

10 And so "know" means you've read something
11 about them. You've heard that name before that you
12 associate with something specific.

13 I see no hands.

14 Have you or do you know anyone who has ever
15 worked for Globefill Incorporated, Elements Spirits Inc.
16 or Kim Brandi? If yes, raise your hand.

17 No hands.

18 So some of you have indicated that you are
19 familiar with the name of one of the witnesses, Dan
20 Aykroyd. What I would like to know and have you answer,
21 have you ever met Mr. Aykroyd or attended any events
22 where he was present? Met him or attended any event
23 where you believe he was present.

24 If yes, raise your hand.

25 No hands are raised.

1 Based on what you have seen -- and most of
2 you mentioned movies, television programs, things of
3 that type -- do any of you have an opinion, either
4 positive or negative, about Mr. Aykroyd?

5 Okay. I'm not going to ask you to share
6 that opinion now. But I think Juror No. 3 has an
7 opinion. And No. 4.

8 Anyone else?

9 Whatever your opinion is for those of you
10 who have an opinion, would your opinion affect your
11 ability to serve as an impartial juror in this case?
12 Another way of saying that is, when you heard that name,
13 did you feel that, Oh, I've already made up my mind? I
14 know how I will decide the case.

15 So the question is, would your opinion for
16 those two individuals who have an opinion, affect your
17 ability to serve as an impartial juror in the case?

18 If your answer is yes, raise your hand.
19 Otherwise, I would assume your answer no. So no hands
20 are raised, so I assume no.

21 Have you or anyone who is close to you, so
22 that could be a family member, close friends, just
23 someone that you think is close, have you or anyone
24 close to you ever been a party to a lawsuit? So this
25 would mean they filed a lawsuit, they sued somebody,

1 somebody sued them. It would include small claims as
2 well.

3 You or anyone close to you ever been a party
4 to a lawsuit answer yes. Raise your hand.

5 So Juror No. 4.

6 THE PROSPECTIVE JUROR: Yeah. My dad was
7 involved in a lawsuit.

8 THE COURT: State your name for the record.

9 THE PROSPECTIVE JUROR: Josh Massi.

10 THE COURT: Do you know when this was?

11 THE PROSPECTIVE JUROR: It was a while ago.
12 Probably over ten years ago.

13 THE COURT: Do you know the nature of the
14 lawsuit; what kind of lawsuit?

15 THE PROSPECTIVE JUROR: It was involved with
16 a business that he owned. I don't know the specifics.

17 THE COURT: And what was the nature of the
18 business?

19 THE PROSPECTIVE JUROR: It was a film
20 developing lab.

21 THE COURT: Do you know if he sued someone
22 or someone sued him?

23 THE PROSPECTIVE JUROR: He sued someone.

24 THE COURT: This lawsuit, was it a matter
25 that was discussed at home so that you could overhear

1 what those discussions were?

2 THE PROSPECTIVE JUROR: No. I mean, I was
3 away at college, so I didn't hear too much about it.

4 THE COURT: Did you attend any of the court
5 proceedings?

6 THE PROSPECTIVE JUROR: No.

7 THE COURT: Is the case over now?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: Do you know how it was ended?

10 THE PROSPECTIVE JUROR: Yes.

11 THE COURT: What do you believe that to be?

12 THE PROSPECTIVE JUROR: That he didn't win.

13 THE COURT: Do you think it was tried? Do
14 you think there was a trial; or do you know that?

15 THE PROSPECTIVE JUROR: I don't know the
16 specifics.

17 THE COURT: And if there was a trial, you
18 didn't attend any of those proceedings?

19 THE PROSPECTIVE JUROR: No.

20 THE COURT: The fact that your father was
21 involved in a lawsuit, do you believe that would have
22 any affect on your ability to be fair and impartial?

23 THE PROSPECTIVE JUROR: No, I don't think
24 so.

25 THE COURT: All right. Thank you.

1 Anyone else?

2 THE PROSPECTIVE JUROR: Is Relevant, the
3 company that I work for, is involved in lawsuits.

4 THE COURT: Well, why don't we explore that.

5 I said involved. What I intended to ask is:
6 Did you have something to do with the lawsuits? In
7 other words, was your deposition taken? Did you go to
8 court? Did you testify as a witness?

9 But the company that you worked for was
10 involved in the lawsuits?

11 THE PROSPECTIVE JUROR: Yes. Multiple. I
12 was not directly involved. My manager was though.

13 THE COURT: Name of company?

14 THE PROSPECTIVE JUROR: Google.

15 THE COURT: And so you believe there have
16 been many lawsuits.

17 THE PROSPECTIVE JUROR: Yes. Including
18 current ones, still ongoing.

19 THE COURT: And your manager was involved in
20 some way.

21 THE PROSPECTIVE JUROR: Yes. Involved in
22 depositions.

23 THE COURT: Was your manager a party to the
24 lawsuits, if you know?

25 THE PROSPECTIVE JUROR: I don't believe so.

1 THE COURT: But you believe his deposition
2 was taken?

3 THE PROSPECTIVE JUROR: Yes.

4 THE COURT: Did you discuss any of these
5 lawsuits so that you know the details of the lawsuit?

6 THE PROSPECTIVE JUROR: No. The most I know
7 is what kind of questions -- what kind of questions my
8 manager was answering for the deposition.

9 THE COURT: But you don't even know the --
10 or do you know the nature the lawsuit?

11 THE PROSPECTIVE JUROR: Only vaguely.

12 THE COURT: So you believe it was just a
13 business dispute? Or do you believe it involved, say,
14 intellectual property. Or do you have any belief?

15 THE PROSPECTIVE JUROR: It is quite possible
16 it involved intellectual property.

17 THE COURT: And if it did involve
18 intellectual property, do you know what it was?

19 THE PROSPECTIVE JUROR: It would be related
20 to YouTube.

21 THE COURT: And there are some lawsuits
22 still ongoing?

23 THE PROSPECTIVE JUROR: Yes.

24 THE COURT: Lawsuits that have been -- in
25 which Google has been involved, have you followed those?

1 Read about them? Talked about them.

2 THE PROSPECTIVE JUROR: Yes.

3 THE COURT: On some of them you know the
4 outcome?

5 THE PROSPECTIVE JUROR: Yes.

6 THE COURT: But you never testified in any
7 of them?

8 THE PROSPECTIVE JUROR: No.

9 THE COURT: Your deposition was never taken?

10 THE PROSPECTIVE JUROR: No.

11 THE COURT: Did you form some opinions about
12 who should prevail based upon what you heard about these
13 lawsuits?

14 THE PROSPECTIVE JUROR: Yes.

15 THE COURT: Was there ever any discussions
16 among others in the workplace about how they were
17 treated by the courts?

18 THE PROSPECTIVE JUROR: Individual people by
19 the courts?

20 THE COURT: The company or individuals.

21 THE PROSPECTIVE JUROR: Yes.

22 THE COURT: I'll stop there. I will
23 probably have some additional questions of you later.

24 Anybody else answer those questions?

25 The next question: Have any of you ever

1 purchased or consumed Crystal Head Vodka or KAH Tequila?

2 Have any of you ever purchased or consumed?

3 If so, raise your hand and I can inquire further.

4 No hands raised.

5 Have any of you ever seen Crystal Head Vodka

6 or KAH Tequila displayed in a store, a bar or a

7 restaurant, to your knowledge? If so, raise your hand.

8 And for those in the audience you don't have

9 to tell me now, but make a note that if you are seated

10 in the box, this is information that you want to share.

11 So I don't have to repeat all these questions again.

12 Have you or anyone you know ever worked in

13 the alcoholic beverage industry? If yes, raise your

14 hand and I will inquire further.

15 Juror No. 4. Tell us yourself, somebody

16 else, what is your relationship is.

17 THE PROSPECTIVE JUROR: My wife worked as a

18 bartender for four years, I believe.

19 THE COURT: During what time period? Like,

20 you know, a couple of years ago or...

21 THE PROSPECTIVE JUROR: Yeah, it was from

22 2011 to 2016, last year.

23 THE COURT: She worked as a bartender?

24 THE PROSPECTIVE JUROR: Correct.

25 THE COURT: So did you have discussions with

1 her about either this Crystal Head Vodka or KAH Tequila?

2 THE PROSPECTIVE JUROR: No.

3 THE COURT: Thank you.

4 Anybody else? Apparently not.

5 Do you or anyone you know own a registered
6 or unregistered trademark or trade dress?

7 And trade dress is the definition that I
8 read earlier when I indicated statement of the case.

9 And if you don't remember what that was, in
10 order to answer these questions, just tell me, and I can
11 read it again.

12 But this question is: Do you or anyone you
13 know own a registered or unregistered trademark or trade
14 dress? If yes, raise your hand and I'll inquire
15 further.

16 Yes, Juror No. 3.

17 THE PROSPECTIVE JUROR: Just by my company.

18 THE COURT: State your name for the record.

19 THE PROSPECTIVE JUROR: Sanjay Vasandani.

20 Would you like me to spell my last name?

21 THE COURT: Yes, please.

22 THE PROSPECTIVE JUROR: V-A-S-A-N-D-A-N-I.

23 THE COURT: And you know someone who owns a
24 registered or unregistered trademark?

25 THE PROSPECTIVE JUROR: The company I worked

1 for, yes.

2 THE COURT: That would be Google?

3 THE PROSPECTIVE JUROR: Yes.

4 THE COURT: What else do you know about
5 trademarks, registered or unregistered or trade dress,
6 other than the fact that you know that they may own
7 some.

8 THE PROSPECTIVE JUROR: Not too many
9 details. I always get confused which rules apply
10 between trade dress, trademark, copyright and so forth.

11 THE COURT: What mark or item do you believe
12 Google may have on -- may have or own that's registered
13 or unregistered? So is it just the name Google itself?
14 Or do you believe there may be other?

15 THE PROSPECTIVE JUROR: In addition to
16 the -- basically the product names. YouTube, Chrome, so
17 forth. Also names of hardware product lines, Nexus,
18 Pixel, so forth.

19 THE COURT: Were you involved in the process
20 of selecting those names or registering them for
21 trademark purposes?

22 THE PROSPECTIVE JUROR: Yes.

23 THE COURT: Anyone else?

24 Thank you, sir.

25 Have you or anyone you know ever been

1 accused of infringement?

2 So Juror No. 3 may have a response to that.

3 But anybody other than juror No. 3.

4 Have you or anyone you know ever been
5 accused of infringement?

6 Anybody other than Juror No. 3?

7 Apparently not.

8 Juror No. 3, tell us what know about that.

9 THE JUROR: We have been -- I don't
10 think anyone in our company has been involved in
11 multiple copyright infringement cases. Some still
12 ongoing, some with appeals. Mostly around software
13 companies specifically.

14 THE COURT: Other than what you just told
15 us, do you know anything more about those lawsuits which
16 Google has been involved?

17 THE PROSPECTIVE JUROR: Can you clarify.

18 THE COURT: Do you have any other
19 information other than the fact that you know there have
20 been some lawsuits, there still may be some lawsuits,
21 your manager may have had his deposition taken and you
22 believe that maybe Google been accused of infringing?
23 But other than that, do you have any other information
24 about these lawsuits?

25 THE PROSPECTIVE JUROR: Nothing other than

1 what's already public.

2 THE COURT: Is there anything that you are
3 aware of as you sit here that you believe could affect
4 your ability to serve as an impartial juror in the case?

5 So I may not have asked a question about it.
6 But you may be sitting here thinking, I do know
7 something that may affect.

8 So Juror No. 1 has his hand up, and I am
9 going to question you separately, sir, about that. So I
10 won't ask you about it now.

11 THE PROSPECTIVE JUROR: Okay.

12 THE COURT: Anybody other than Juror No. 1
13 concerned that there is just something about you or
14 something that you know, you read, you heard, that you
15 are concerned might affect your ability to serve as an
16 impartial juror in this case?

17 Impartiality can be described as, you are
18 predisposed to decide the case in favor of one side or
19 the other. You don't know anything about the case yet,
20 you've just heard a little bit, and you've already have
21 come to some conclusion? Anybody have that state of
22 mind? Thank you.

23 At this time, I am going to ask that each of
24 you stand and answer the individual voir dire questions.
25 So you should have a sheet that the clerk passed out to

1 you.

2 It starts with your name. Spell the last
3 name. So you will be standing and answering those
4 questions.

5 If your question No. 2 says "place of
6 residence," we are not asking you to disclose your
7 address. We just want to know the community in which
8 you live.

9 So as most of you know, the jurisdiction of
10 this court goes all the way north to the Monterey County
11 line and south to San Diego, and then obviously west of
12 the ocean. And then east may include -- go as far as
13 Nevada. So we want to know just the area where you
14 reside.

15 We'll start with our first juror. If you
16 stand, you will have the portable mic and you'll answer
17 those questions.

18 THE PROSPECTIVE JUROR: My name Bruce
19 Batten, B-A-T-T-E-N. Residence is Chatsworth,
20 California. Employer name is Benny Mac Incorporated.
21 My current occupation is a business systems analyst.

22 Prior work history would be QB Insurance, in
23 the same occupation as a business systems analyst.

24 THE COURT: How long have you been in that
25 field? Business systems analyst?

1 THE PROSPECTIVE JUROR: Several years.

2 THE COURT: About how many? 20?

3 THE PROSPECTIVE JUROR: 20.

4 THE COURT: How long have you worked for
5 your present employer?

6 THE PROSPECTIVE JUROR: Close to two years.
7 Year and a half.

8 THE COURT: And then prior to that?

9 THE PROSPECTIVE JUROR: Two and a half
10 years.

11 THE COURT: And then the next employee that
12 you had sounds like it would have been over a four years
13 ago?

14 THE PROSPECTIVE JUROR: Yes.

15 THE COURT: And how long did you work for
16 that employer?

17 THE PROSPECTIVE JUROR: Actually was
18 unemployed for a couple years.

19 THE COURT: And during the time that you
20 were unemployed, did you -- were you engaged in any
21 particular types of activity, just things that you did
22 during that period?

23 THE PROSPECTIVE JUROR: It was a long
24 vacation.

25 THE COURT: Thank you. You may continue.

1 THE PROSPECTIVE JUROR: Supervisory role.
2 Not within the last four years, but maybe 15 years ago.

3 THE COURT: How many people would you have
4 supervised during that period?

5 THE PROSPECTIVE JUROR: At one time maybe up
6 to 20.

7 THE COURT: What was your responsibility for
8 them? Did you have input or prepared their performance
9 evaluation?

10 THE JUROR: Yes.

11 THE COURT: Input or were you the sole or
12 the final decision maker?

13 THE PROSPECTIVE JUROR: Pretty close to the
14 final decision maker.

15 THE COURT: Did you have the responsibility
16 for hiring and firing?

17 THE PROSPECTIVE JUROR: Firing is not sole
18 responsibility but part of it.

19 THE COURT: You had input?

20 THE PROSPECTIVE JUROR: Yes.

21 THE COURT: How about hiring?

22 THE PROSPECTIVE JUROR: Hiring, not as much;
23 but yes. Partial input.

24 THE COURT: Would you be one of the persons
25 who may interview those that are --

1 THE PROSPECTIVE JUROR: Yes.

2 THE COURT: -- being considered for
3 employment?

4 Okay.

5 Question No. 7.

6 THE PROSPECTIVE JUROR: High school was the
7 highest level of education. Marital status is
8 separated.

9 THE COURT: Are there any other adults that
10 live in your same household?

11 THE PROSPECTIVE JUROR: No.

12 THE COURT: Do you have adult children who
13 are employed?

14 THE PROSPECTIVE JUROR: No.

15 THE COURT: Question No. 11, hobbies, clubs,
16 organizations.

17 MR. HUMMEL: I play hockey, recreational
18 hockey.

19 THE COURT: Do you presently or have you in
20 the past belonged to any clubs or organizations?

21 THE PROSPECTIVE JUROR: No.

22 THE COURT: Within your workplace, are there
23 occasions when you have to make decisions with others?
24 In other words, there would be a conversation about some
25 decision that has to be made; there's a group of people,

1 they are all having some input and having a discussion
2 and then ultimately take some votes and make a decision?

3 THE PROSPECTIVE JUROR: Yes.

4 THE COURT: And has that been a process that
5 you participated in for most of your career?

6 THE PROSPECTIVE JUROR: Yes.

7 THE COURT: Military service?

8 THE PROSPECTIVE JUROR: None.

9 THE COURT: Have you ever served as a juror
10 in either a criminal case or a civil case?

11 THE PROSPECTIVE JUROR: Yes.

12 THE COURT: How many occasions, if you
13 recall?

14 THE PROSPECTIVE JUROR: One.

15 THE COURT: What was the nature of the case,
16 if you recall?

17 THE PROSPECTIVE JUROR: I think it was a
18 spousal abuse case.

19 THE COURT: Do you recall how long you
20 served on that case?

21 THE PROSPECTIVE JUROR: It was about a day
22 and a half. And it was settled.

23 THE COURT: So the jury never had to decide
24 issues?

25 THE PROSPECTIVE JUROR: We began

1 deliberations but never finished.

2 THE COURT: So you heard testimony, started
3 deliberating, and then were told that the case had been
4 resolved?

5 THE PROSPECTIVE JUROR: Yes.

6 THE COURT: How long ago was it?

7 THE PROSPECTIVE JUROR: Quite a long time.
8 Probably 20 years. 15, 20 years.

9 THE COURT: And since you did hear
10 testimony, commence deliberating, how would you describe
11 that experience of being a juror?

12 THE PROSPECTIVE JUROR: It was interesting
13 initially. The deliberation was frustrating.

14 THE COURT: And is that because it was hard
15 to make decisions in a group setting?

16 THE PROSPECTIVE JUROR: Yes.

17 THE COURT: Have you ever been a member of
18 the grand jury?

19 THE PROSPECTIVE JUROR: No.

20 THE COURT: And other than what you observed
21 or what you have been told since you have been here in
22 the courtroom, do you have any other information about
23 this case?

24 THE PROSPECTIVE JUROR: No.

25 THE COURT: And I think you shared with us

1 when you came into the courthouse you heard the lawyers
2 saying something. But other than that, any other
3 nothing about this case?

4 THE PROSPECTIVE JUROR: Other than that, no.

5 THE COURT: Have you formed any opinions
6 about the parties or their attorney has which you think
7 would affect your ability to be impartial?

8 THE PROSPECTIVE JUROR: Yes. I was really
9 put off by the comments that they made.

10 THE COURT: All right. So I'm going to ask
11 you more questions about that.

12 THE PROSPECTIVE JUROR: Sure.

13 THE COURT: Thank you.

14 Could we have the next juror, please.

15 THE JUROR: My name is Jennifer Martinez.
16 M-A-R-T-I-N-E-Z.

17 My place of residence is Oxford, California.
18 My employer is Bright Horizons. My occupation is an
19 education coordinator. And I have been employed there
20 16 years.

21 THE COURT: What is the nature of their
22 business.

23 THE PROSPECTIVE JUROR: We're the child care
24 center for AMGEN.

25 THE COURT: You may continue.

1 THE JUROR: I do currently hold a
2 supervisory role.

3 THE COURT: How many people would you
4 supervise?

5 THE PROSPECTIVE JUROR: 21.

6 THE COURT: Do you prepare their performance
7 evaluation?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: Do you have input or are you the
10 final decision maker?

11 THE PROSPECTIVE JUROR: Second to the last
12 one, decision maker.

13 THE COURT: How long have you served in that
14 capacity.

15 THE PROSPECTIVE JUROR: Five years.

16 THE COURT: You may continue.

17 THE PROSPECTIVE JUROR: My highest level of
18 education is a bachelor's degree.

19 THE COURT: What was your concentration or
20 your study at the time?

21 THE PROSPECTIVE JUROR: Criminology. My
22 marital status is married.

23 THE COURT: Other adults reside in your
24 household?

25 THE JUROR: My mother.

1 THE COURT: Any adult children?

2 THE JUROR: No.

3 THE COURT: Hobbies, clubs, organizations?

4 THE PROSPECTIVE JUROR: Soccer. And just
5 spend time with my children. And organization is NAYC,
6 the National Association of Education for Young
7 Children.

8 THE COURT: Have you ever been a -- strike
9 that. Have you ever held an office in that
10 organization?

11 THE PROSPECTIVE JUROR: No.

12 THE COURT: And do they have meetings and --
13 that you attend, have discussions and vote on things?

14 THE PROSPECTIVE JUROR: They do have
15 conferences, but I've attended one.

16 THE COURT: In your workplace, are there
17 times that you have to make decisions along with others
18 so that you would have an issue, you'd be discussing it
19 with other people, maybe take a vote and try to reach a
20 decision?

21 THE PROSPECTIVE JUROR: Yes.

22 THE COURT: Are you comfortable with that
23 process?

24 THE PROSPECTIVE JUROR: Yes.

25 THE COURT: Military service?

1 THE PROSPECTIVE JUROR: No.

2 THE COURT: Have you ever served as a juror
3 in any kind of case?

4 THE PROSPECTIVE JUROR: No.

5 THE COURT: Ever been a member of the grand
6 jury?

7 THE PROSPECTIVE JUROR: No.

8 THE COURT: Other than what you've heard
9 since you've been here in the courtroom, do you believe
10 you have any information about this case?

11 THE PROSPECTIVE JUROR: No, I don't.

12 THE COURT: Have you formed any opinion
13 about the parties or their attorneys that would affect
14 your ability to be fair and impartial?

15 THE PROSPECTIVE JUROR: No.

16 THE COURT: Thank you. Next, please.

17 THE PROSPECTIVE JUROR: My name is Sanjay
18 Vasandani, Last name is V-A-S-A-N-D-A-N-I.

19 I reside in West Los Angeles. Employer's
20 name is Google. Occupation is a software engineer. I
21 have been in that role for the past six years at Google,
22 and still in the same role before that.

23 I have not been a people manager, but I have
24 been a technical lead for my team.

25 THE COURT: How large is the team?

1 THE PROSPECTIVE JUROR: I would say about
2 five people.

3 THE COURT: And do you have the
4 responsibility for performance evaluation for those
5 five?

6 THE PROSPECTIVE JUROR: We do group
7 performance evaluations. It is all done by peer review,
8 yes.

9 THE COURT: So you would have some input?

10 THE JUROR: Yes.

11 THE COURT: You may continue.

12 THE PROSPECTIVE JUROR: Highest level of
13 education is bachelor of sciences. I am married. The
14 other adult residing in my household, my wife, who is an
15 artist working in TV animation. No adult children. I
16 am not in a formal club or organizations right now.
17 Hobbies include Porsche photography, tabletop video
18 gaming.

19 THE COURT: Have you ever been in occasion
20 when you belonged to an organization that has regular
21 meetings. You attended those meetings. You voted on
22 things?

23 THE PROSPECTIVE JUROR: No.

24 THE COURT: All right. You may continue.

25 THE PROSPECTIVE JUROR: No military service.

1 I have not served as a juror in a criminal, civil case,
2 nor on a grand jury.

3 The last two questions. I don't believe I
4 have any other information about the case. And I don't
5 think I've -- I don't believe I formed any opinions as
6 of yet that would affect my ability to be impartial.

7 THE COURT: All right. Thank you. Next,
8 please.

9 THE PROSPECTIVE JUROR: Josh Massi,
10 M-A-S-S-I. Place of residence, Thousand Oaks,
11 California. Employer is Wells Fargo. And I'm a sales
12 consultant.

13 THE COURT: How long have you worked for
14 them?

15 THE PROSPECTIVE JUROR: Eight years.

16 And then any supervisory roles, not with
17 Wells Fargo.

18 THE COURT: Prior to your employment with
19 Wells Fargo --

20 THE PROSPECTIVE JUROR: Yes.

21 THE COURT: -- did you supervise?

22 THE PROSPECTIVE JUROR: Yes.

23 THE COURT: How many persons.

24 THE PROSPECTIVE JUROR: It was about 15.

25 THE COURT: Were you responsible for their

1 performance evaluation?

2 THE JUROR: Yes.

3 THE COURT: All right. You may continue.

4 THE PROSPECTIVE JUROR: Okay. Education is
5 M.B.A. I'm married. Yes, there are other adults
6 residing in my house. My wife and my sister-in-law.

7 THE COURT: Either of them employed outside
8 of the home?

9 THE PROSPECTIVE JUROR: Yes.

10 THE COURT: What are their occupations?

11 THE PROSPECTIVE JUROR: One -- well, one
12 is -- works for Wells Fargo as well.

13 THE COURT: And what is her job at Wells
14 Fargo?

15 THE PROSPECTIVE JUROR: She is a teller.

16 THE COURT: And the other?

17 THE PROSPECTIVE JUROR: My wife is stay at
18 home and a student.

19 THE COURT: What is she studying.

20 THE PROSPECTIVE JUROR: She is studying
21 teaching.

22 THE COURT: You may continue.

23 THE PROSPECTIVE JUROR: I do not have any
24 adult children.

25 Hobbies. Hiking, golf, anything outside.

1 No military service.

2 THE COURT: Ever been a member of a club or
3 organization that held meetings, you attended those
4 meetings and voted on things?

5 THE PROSPECTIVE JUROR: No.

6 THE COURT: For purposes of this question, I
7 should indicate to everyone, that could be a union, it
8 could be a church or religious group. It could be the
9 P.T.A.. It is just some group where you attend their
10 meetings. They have discussions about things. You have
11 to vote on things. So that's how broad that question
12 is.

13 With that explanation, your answer is still
14 no?

15 THE PROSPECTIVE JUROR: Correct.

16 THE COURT: You may continue.

17 THE PROSPECTIVE JUROR: Military service,
18 none.

19 Yes, I have served as a juror before.

20 THE COURT: How long ago? How many cases?

21 THE PROSPECTIVE JUROR: One case. Two years
22 ago. It was a criminal case.

23 THE COURT: Were you a deliberating juror?

24 THE PROSPECTIVE JUROR: I actually dropped
25 out right before deliberation.

1 THE COURT: So you heard evidence but did
2 not deliberate?

3 THE PROSPECTIVE JUROR: Correct.

4 THE COURT: How long did you listen to the
5 evidence?

6 THE PROSPECTIVE JUROR: Four weeks.

7 THE COURT: How would you describe that
8 experience?

9 THE PROSPECTIVE JUROR: Interesting at
10 first.

11 THE COURT: Why did you drop out?

12 THE PROSPECTIVE JUROR: My mom got sick.

13 THE COURT: Interesting at first. How would
14 you describe after that first?

15 THE PROSPECTIVE JUROR: Long. And ready for
16 it to be over.

17 THE COURT: What was the nature of the
18 offense?

19 THE PROSPECTIVE JUROR: It was a murder.

20 THE COURT: Willing to serve again if
21 selected to serve?

22 THE PROSPECTIVE JUROR: Yeah.

23 THE COURT: Okay. Ever been a member of the
24 grand jury?

25 THE PROSPECTIVE JUROR: No.

1 THE COURT: The last two questions: Do you
2 have any information about the case other than what you
3 have heard here in the courtroom?

4 THE PROSPECTIVE JUROR: No.

5 THE COURT: Have you formed any opinions
6 about the parties or their attorneys that would affect
7 your ability to be impartial?

8 THE PROSPECTIVE JUROR: No, I don't believe
9 so.

10 THE COURT: So I'm going to stop here. I
11 did promise that we would break for lunch. And so it is
12 almost 12:30. We will be in recess for an hour and a
13 half. So your return time is 2:00 o'clock. You will
14 come back to this courtroom.

15 For those of you seated in the audience, you
16 will just sit where you are sitting now. For those of
17 you in the box, you will sit in the seats that you
18 presently occupying.

19 Just an admonishment: Don't talk about the
20 case, anyone involved in the case, anything that has to
21 do with the subject of this case.

22 I will be giving you more admonishments
23 later once we get the jury selected. And then there are
24 a couple of you that I would ask to stay. I can ask you
25 a few additional questions. So it would be Juror No. 1,

1 Juror No. 3, Juror No. 4. All of the others, including
2 the audience, enjoy your lunch.

3 (PROSPECTIVE JURORS EXCUSED FOR LUNCH.)

4 THE COURT: All right. I will start with
5 Juror No. 1. I will ask you to come to sidebar. So
6 we'll be talking outside the presence of the others.
7 And I invite counsel to the sidebar.

8 (SIDEBAR.)

9 THE COURT: State your name, sir.

10 THE WITNESS: Bruce Batten.

11 THE COURT: And you overheard something as
12 you were entering the courthouse. Could you tell me
13 what you heard and who you think may have been involved?

14 THE PROSPECTIVE JUROR: When I was entering
15 into the building.

16 THE COURT: Keep your voice soft as you can.
17 We are on the record.

18 THE PROSPECTIVE JUROR: When I was entering
19 into the building there was a protestor outside the
20 front and he was protesting against one of the judges.
21 And I was in front of the line of the plaintiff group.
22 And a comment was made in a joking fashion that I did
23 not find very funny, regarding the gentleman and the
24 method in which he was protesting, as well as a comment
25 that was made about another protestor, and that was at

1 another court.

2 It was very off-putting to me. And I found
3 it very arrogant.

4 THE COURT: And could you identify who made
5 the statement?

6 THE PROSPECTIVE JUROR: It was this
7 gentlemen right here.

8 MR. BERG: Me.

9 THE COURT: You believe that this would
10 affect your ability to be fair.

11 THE JUROR: I felt very strongly about it.
12 And once I got into the building and I sat down, and I
13 getting something to eat, I hoped that I don't have to
14 be in the room for that case.

15 THE COURT: Okay. So realizing that the
16 gentleman is the attorney for the plaintiff, one of the
17 attorneys for the plaintiff in the case, so he is not
18 actually involved in the case, but, yes, he may be
19 asking questions of witnesses and commenting on things,
20 you feel that would affect your ability to be fair and
21 impartial?

22 THE PROSPECTIVE JUROR: Yeah. I'm pretty
23 strongly opinionated about stuff like that. It has
24 definitely shaken me. And I already knew once I walked
25 in and saw them and it was this case -- I was already

1 feeling a little bit of anxiety about the whole
2 situation.

3 And to be honest, I would have liked to have
4 served but I just -- it really put me off. And it is
5 shaken me right now. I just don't -- I didn't like it.

6 THE COURT: Okay. Thank you. If either
7 counsel have any additional questions, you may ask
8 through the Court.

9 MR. BERG: Oh, yes.

10 THE COURT: Tell me what that question is.

11 MR. BERG: Yes. Did the gentleman see the
12 sign which the protestor was calling Judge Gee a thief?

13 THE PROSPECTIVE JUROR: Yes.

14 THE COURT: So you saw the sign?

15 THE PROSPECTIVE JUROR: Yes.

16 THE COURT: And still whatever comments were
17 made, you still believe that if you were selected to
18 serve on this case, you couldn't be fair and impartial?

19 THE PROSPECTIVE JUROR: Yes, I do.

20 THE COURT: Okay.

21 MR. BERG: And first let me ask through Your
22 Honor, this is not just something that you made up as
23 you walked in the courtroom. You really feel this
24 deeply?

25 THE PROSPECTIVE JUROR: Yeah, I do.

1 MR. BERG: Apparently, I'm not --

2 THE COURT: My sense is he feels deeply
3 about what he heard and he has indicated he thinks it
4 would affect his ability to be fair and impartial.

5 All right. Any questions from anybody else?

6 MR. HUMMEL: Not from us, Your Honor.

7 THE COURT: The Court would be inclined to
8 excuse the juror the at this point. Thank you, sir, for
9 sharing that with us. You will go back to the jury
10 assembly room.

11 THE JUROR: Right now?

12 THE COURT: No, no. You can take your
13 lunch.

14 THE PROSPECTIVE JUROR: All right.

15 MR. BERG: May I thank the juror for his
16 candor.

17 THE COURT: Thank you, sir.

18 (OPEN COURT)

19 THE COURT: Our next juror, Juror No. 3.
20 State your name for the record.

21 THE PROSPECTIVE JUROR: Sanjay Vasandani,
22 V-A-S-A-N-D-A-N-I.

23 THE COURT: So you expressed some concerns
24 during my questioning. Let's see if you have an --

25 MR. BERG: I didn't hear.

1 THE JUROR: No. First plaintiff Dan
2 Aykroyd.

3 THE COURT: You have an opinion about him?
4 Can you just tell us what the opinion is.

5 THE PROSPECTIVE JUROR: Just be a fan.
6 So --

7 THE COURT: Do you think that would
8 influence your decision if he were called as a witness
9 in the case, and you had to decide --

10 THE PROSPECTIVE JUROR: No, I'd believe him
11 or not believe him just the same as somebody else,
12 anyone different who I think -- living in L.A. it comes
13 with the territory.

14 THE COURT: So I don't have any additional
15 questions. Wait just a moment. I will see if there are
16 any questions first.

17 MR. HUMMEL: I don't have anything.

18 THE COURT: Any questions propounded?

19 MR. BERG: I have no questions.

20 THE PROSPECTIVE JUROR: I did recall now a
21 specific trademark in the case, related to Microsoft
22 making their own YouTube and using the YouTube name and
23 logo not being official product and misrepresenting
24 that. I just recalled that.

25 THE COURT: Again, your involvement in that?

1 THE PROSPECTIVE JUROR: I'm not directly
2 involved. I just knew about it.

3 THE COURT: Any further inquiry?

4 MR. HUMMEL: Your Honor, you could ask the
5 juror, please, to just clarify who was the plaintiff and
6 the defendant, because I just missed it.

7 THE COURT: Who's being sued? Was Google
8 suing or Google being sued?

9 THE PROSPECTIVE JUROR: It was Google being
10 sued.

11 THE COURT: Google.

12 THE PROSPECTIVE JUROR: I don't know whether
13 it went to lawsuit or settled before it went to trial.

14 THE COURT: Do you know if it is resolved
15 now?

16 THE PROSPECTIVE JUROR: It is resolved, yes.

17 THE COURT: How long ago, do you remember,
18 if you even remember, when this lawsuit was on?

19 THE PROSPECTIVE JUROR: I want to say three,
20 four years ago.

21 THE COURT: Okay.

22 THE PROSPECTIVE JUROR: I did have some
23 internal details that I knew about that were not made
24 public. But, again, I was not directly involved.

25 THE COURT: Okay. Were those details such

1 that you could make them public now or you should not?

2 THE PROSPECTIVE JUROR: Still should not
3 make public.

4 THE COURT: All right. Thank you.

5 Any other inquiry?

6 MR. BERG: No.

7 MR. HUMMEL: No.

8 THE COURT: Thank you. You can go to lunch
9 now.

10 THE COURT: Juror 4. Please identify
11 yourself.

12 She does not know your voices.

13 MR. HUMMEL: I just realized.

14 MR. BERG: Where is the microphone?

15 MR. HUMMEL: Here.

16 THE COURT: State your name for the record.

17 THE PROSPECTIVE JUROR: Josh Massi,
18 M-A-S-S-I.

19 THE COURT: I think you had an opinion about
20 Mr. Aykroyd?

21 THE PROSPECTIVE JUROR: Aykroyd.

22 THE COURT: What is that opinion?

23 THE PROSPECTIVE JUROR: A positive one.
24 Just been a fan of him over the years.

25 THE COURT: And so if he's called to testify

1 as a witness in the case, there is some testimony about
2 him, and your job will be to decide which witnesses you
3 believe, who you don't believe, how much weight should
4 be given to their testimony, do you think that
5 decisionmaking by you would be unduly influenced because
6 you have a positive opinion about him?

7 THE PROSPECTIVE JUROR: I mean, I think
8 naturally you kind of trust someone who you have a
9 positive opinion more than just taking them for their
10 word. I just think that's natural.

11 THE COURT: Do you know anything about him
12 other than --

13 THE PROSPECTIVE JUROR: Personally, no, I
14 don't know anything personal about him.

15 THE COURT: Again, it is just television
16 programs that he appeared on.

17 THE PROSPECTIVE JUROR: Yeah.

18 THE COURT: Movies he might have appeared
19 in.

20 THE PROSPECTIVE JUROR: I listen to some
21 interviews of him. So you kind of -- I feel like you
22 kind of get an idea who the person is. Again, that's
23 all through just the media.

24 THE COURT: Interviews of him. Can you tell
25 us any more about that, like when --

1 THE PROSPECTIVE JUROR: He was on Howard
2 Stern. I think it was sometime last year that I heard
3 him.

4 THE COURT: What would that interview
5 consist of, just more about his career or --

6 THE PROSPECTIVE JUROR: Yeah. Just about
7 his career.

8 THE COURT: Okay. Any other questions that
9 counsel would like for me to request?

10 MR. HUMMEL: Keith Hummel, just one. Would
11 you ask Mr. Massi if it would changes his opinion or
12 affect his opinion if he understood that Mr. Aykroyd was
13 an owner of the plaintiff Globefill?

14 THE COURT: So is that to suggest that that
15 would be the purpose for his being called, that he has
16 an ownership interest, but that he is not likely to be
17 testifying about things that have to do with the real
18 issue in the case?

19 MR. HUMMEL: I think both, Your Honor.
20 Keith Hummel.

21 THE COURT: He may be testifying that he was
22 an owner of a company.

23 THE PROSPECTIVE JUROR: Okay.

24 THE COURT: That's probably not in dispute.

25 MR. HUMMEL: Correct.

1 MR. BERG: Yes.

2 THE COURT: He also may be testifying about
3 the very trade dress that's in issue in the case. I
4 don't know. If there will be disputed facts there or
5 not. But there could be. If his testimony was one way
6 and then the other witnesses testified different from
7 him, you don't know who the other witnesses are. You
8 don't know anything about them. Would what you know
9 about him is what you've seen on TV or something?

10 THE PROSPECTIVE JUROR: Yeah.

11 THE COURT: Are you thinking that you would
12 be influenced because you have seen him on TV and heard
13 what he said?

14 THE PROSPECTIVE JUROR: I mean, that is the
15 tough question. All I know is I have a positive opinion
16 of the man. Do I know basically what he says is going
17 to influence me one way or the other? I don't know.
18 The answer to that question, to be honest with you, I
19 don't think so.

20 THE COURT: You have a positive opinion.
21 Does that mean that you would always believe everything
22 he said?

23 THE PROSPECTIVE JUROR: No. It doesn't mean
24 I would believe everything he said.

25 THE COURT: Nor does it mean you would never

1 believe anything he said.

2 THE JUROR: You're correct.

3 THE COURT: Keep an open mind whether or not
4 you believe him or not believe him based upon what you
5 might hear in this case.

6 THE PROSPECTIVE JUROR: I have an open mind.
7 I want them to know I have a very positive opinion of
8 him that could potentially -- I don't see that would
9 because I don't know the man. I don't know it would
10 influence me or not. I don't know so I don't know.

11 THE COURT: Inquire?

12 MR. MILLER: John Miller as to whether the
13 Crystal Head Vodka was discussed on the Howard Stern
14 interview.

15 THE PROSPECTIVE JUROR: To be honest with
16 you, like what his history is, I thought he remembered
17 him saying about a case that he couldn't discuss it.
18 But I don't remember specifics, so I don't know. I
19 don't remember him mentioning that.

20 THE COURT: How long ago was the interview?

21 THE PROSPECTIVE JUROR: I believe 2016. I
22 might have heard a reply later in the year, because it
23 wasn't too long ago that I heard it.

24 MR. MILLER: But there was a discussion?

25 John Miller again. There was discussion

1 about a legal cause?

2 THE COURT: Was there a discussion about an
3 case or was there a mention that there was a case. But
4 he couldn't talk about the detail?

5 THE PROSPECTIVE JUROR: I couldn't tell you
6 the answer. It was couple months ago, two hours, hour
7 and a half interview, if it was -- I thought I
8 remembered him saying something about a case. If he did
9 though, it wasn't in any detail. So I don't know.

10 THE COURT: You recall if any names -- who
11 else was involved in the case?

12 MR. MILLER: Was there mention of any
13 outcomes or frustration or anything with respect to the
14 case?

15 THE COURT: I can let you answer that
16 question.

17 THE PROSPECTIVE JUROR: I don't recall.

18 THE COURT: Anything else?

19 MR. HUMMEL: Keith Hummel, nothing further.

20 MR. BERG: David Berg. Nothing further for
21 me.

22 THE COURT: Okay. You can go to lunch.
23 Thank you.

24 THE PROSPECTIVE JUROR: Thank you.

25 THE COURT: We are going to recess now. You

1 can go to lunch.

2 Other matters that the court will need to
3 address with you at some point? I don't think any of
4 them affect jury selection. So what I'm hoping to do
5 today is at least get the jury.

6 If you can identify for me any issues you
7 raised, ex parte applications things that the Court
8 hasn't addressed, which might affect opening statements.
9 So if we can get the jury selected and we are going to
10 -- be ready for opening statements, so if there is an
11 issue that's outstanding and you think that might have
12 some affect on your opening you would identify that for
13 me.

14 We would probably take a break anyway.
15 After the jury gets selected, the Court would show them
16 where our jury room is located and answer any other
17 questions they may have. All before opening.

18 So there would be time for you to raise this
19 issue with the Court.

20 My understanding is that the technology
21 question that you raised has been resolved?

22 MR. HUMMEL: Yes, Your Honor.

23 MR. BERG: Yes, Your Honor.

24 THE COURT: Okay. All right. Unless
25 there's something else, let's go to lunch.

1 MR. BERG: Just a very quick question, in
2 the communication I received from the Court, I think it
3 is -- we would be in session five hours today. Is that
4 correct, is it or --

5 THE COURT: Today it will be until we get
6 the jury. Unless I reached a time that I feel like we
7 just need to let everybody leave. But then the Court
8 would have sessions with counsel afterwards.

9 So even when we excuse the jury, if there
10 are things that we need to talk about that you are
11 concerned, they may come up tomorrow or something that
12 the Court hasn't addressed, so you may be staying even
13 after the jury leaves. So typically, I would let the
14 jurors go. We have changed time now, so I'm always
15 concerned whether or not it is dark outside. Around
16 5:00, 5:30. I would usually excuse the jury anyway.
17 But there may be issues that counsel wishes to raise
18 with the Court, and then we would stay later.

19 MR. BERG: There will issues that affect
20 opening. Keith -- Mr. Hummel and I worked out a great
21 deal of it, but there are some limiting issues for
22 opening.

23 THE COURT: It is not going to be very long.
24 But anyway, we will have discussion before you to make
25 your opening. Generally I don't permit long opening

1 statements, so we can talk about that too.

2 MR. BERG: Can you give us an idea how long
3 you do permit?

4 THE COURT: Usually 15 or 20 minutes.
5 That's it.

6 MR. BERG: Well, okay.

7 THE COURT: That's it.

8 MR. BERG: Thank you, Your Honor.

9 (END OF SIDE BAR.)

10 (OPEN COURT.)

11 THE COURT: I think we can be in recess.

12 (RECESS TAKEN.)

13 THE CLERK: Please rise. This Court's now
14 in recess.

15 (OPEN COURT.)

16 THE COURT: So we'll continue with the
17 jurors having an opportunity to respond to the
18 questions, the individual voir dire questions.

19 And so I think we are on Juror No. 4.

20 So we'll need to get you the mic.

21 Again, your name.

22 PROSPECTIVE JUROR: My name is Kevin Van,
23 V-A-N. I live in West Covina.

24 I work for a company named Moog, M-O-O-G.
25 I'm an engineer, for 16 years. What we do is we make

1 spacecraft mechanism. And I have six people working for
2 me, so I kind of like supervisor. I have a BS in
3 engineering. Married. My wife live with me. She is a
4 nurse. I don't have adult kid.

5 My hobbies are fishing and basketball,
6 playing basketball. I am not in the service. I have
7 not served any jury. No on grand jury also. I have no
8 info. on this case. And 16, also no.

9 THE COURT: And 16 is: Have you formed any
10 opinions about the parties or their attorney that would
11 affect your ability to be fair and impartial.

12 And you say no.

13 PROSPECTIVE JUROR: Correct.

14 THE COURT: Let me follow up and ask you a
15 few questions. So those people that you supervise, are
16 you responsible for their performance evaluations?

17 PROSPECTIVE JUROR: I give input to my boss.

18 THE COURT: Have you at any time belonged to
19 a group that met, discussed issues and took votes on
20 things? It may be in the workplace, it may be outside
21 of the workplace.

22 PROSPECTIVE JUROR: No.

23 THE COURT: Within the job, do you meet,
24 say, with these people that you supervise? Or do you
25 meet with others in the workplace to try to make

1 decisions about things that are important to the work?

2 PROSPECTIVE JUROR: Yes. I meet with
3 managers, supervisors. Same level as mine. We talk
4 among ourselves.

5 THE COURT: And then you either make a
6 recommendation to somebody else or you come to a
7 decision?

8 PROSPECTIVE JUROR: That's correct. I make
9 the recommendation.

10 THE COURT: Are you comfortable with that
11 process?

12 PROSPECTIVE JUROR: Sometimes no; sometimes
13 yes.

14 THE COURT: Thank you, sir.

15 Next, please.

16 PROSPECTIVE JUROR: My name is Rosa
17 Hernandez, H-E-R-N-A-N-D-E-Z. I live now they call it
18 Balboa. But it was West Van Nuys before. I am retired.
19 My last --

20 THE COURT: How long you been retired?

21 PROSPECTIVE JUROR: A year. Less than a
22 year.

23 THE COURT: How many years did you work for
24 the company?

25 PROSPECTIVE JUROR: Last company, around

1 14 years.

2 THE COURT: What was your job there?

3 PROSPECTIVE JUROR: I was senior payroll
4 coordinator.

5 THE COURT: And did you supervise others?

6 PROSPECTIVE JUROR: No.

7 THE COURT: You may continue.

8 PROSPECTIVE JUROR: I have three years of
9 chemical engineering which I didn't finish. I'm
10 married. I live with my husband. My son, he is a
11 paralegal. I don't know what company that he work for.
12 And I belong to American Payroll Association. And never
13 been in military. And I never serve as a juror. And I
14 never been a member of the grand jury.

15 I don't have any information about this
16 case. And I don't have any opinion that would affect my
17 ability to be impartial.

18 THE COURT: And tell me again the
19 organization that you belong to.

20 PROSPECTIVE JUROR: Well, it is an
21 organization for the -- because now I'm a certified
22 payroll professional. And usually what it does is you
23 have to have classes to update, you know, for position
24 that I had before.

25 THE COURT: You are retired now. Do you

1 still participate with that group or organization?

2 PROSPECTIVE JUROR: Yes, I still do.

3 THE COURT: So what's your role now?

4 PROSPECTIVE JUROR: Nothing. Just to keep
5 myself, you know, with knowledge in payroll. And state
6 and federal.

7 THE COURT: Are you taking classes
8 currently?

9 PROSPECTIVE JUROR: No.
10 Not the last few months.

11 THE COURT: And do you meet with the former
12 coworkers, those who were still working at the place
13 where you used to work? Do you get together with them
14 periodically?

15 PROSPECTIVE JUROR: Actually, I usually see
16 my old boss, because we move from Texas to California
17 and she's retired too. So kind of keep in contact.

18 THE COURT: So during the time that you were
19 working before retirement --

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: -- did you ever have the
22 experience of having to meet with others say in a group
23 setting, talk about issues that may affect your work and
24 make some decisions that were work related?

25 THE WITNESS: Well, not to make decisions,

1 but to give input.

2 THE COURT: Outside the work, were you
3 involved in a group where you did meet and make
4 decisions about something, planning a trip or event or
5 activity of some kind?

6 THE WITNESS: No.

7 THE COURT: Haven't had that experience?

8 PROSPECTIVE JUROR: No. Only with my
9 husband to go on vacation.

10 THE COURT: Your son is a paralegal?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Does he live here in
13 Los Angeles?

14 PROSPECTIVE JUROR: Yes, he does.

15 THE COURT: Works here as well?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: You don't know the name of the
18 company for which he works?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Do you think it is a law firm or
21 do you think it is a company?

22 PROSPECTIVE JUROR: No, no, no. I know it
23 is not law firm because it is always involved like kind
24 of films entertainment all that. I think we work
25 with -- I don't know.

1 THE COURT: Thank you.

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Next, please.

4 PROSPECTIVE JUROR: Hi, my name is Raymond
5 Gross, G-R-O-S-S.

6 I live in south Los Angeles. I am currently
7 retired -- I'm retired from the City of Los Angeles.

8 THE COURT: How long have you been retired?

9 PROSPECTIVE JUROR: Six years. And --

10 THE COURT: What was your work before
11 retirement?

12 PROSPECTIVE JUROR: Park and building
13 maintenance.

14 THE COURT: How long did you work for the
15 city in that capacity?

16 PROSPECTIVE JUROR: 35 years. Highest level
17 of education, high school. Marital status, single.

18 THE COURT: Did you ever supervise others
19 before retirement?

20 PROSPECTIVE JUROR: Yes. I was a weekend
21 supervisor.

22 THE COURT: How many people would you have
23 supervised?

24 PROSPECTIVE JUROR: Seven.

25 THE COURT: Were you responsible for their

1 performance evaluations?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: All right. You may continue.

4 PROSPECTIVE JUROR: I have one adult son at
5 home. He is a student. And he works part-time for
6 Courtyard Marriott. And I have an adult daughter who
7 lives outside the home. And she is a probation officer
8 for Clark County Nevada. My hobbies, I just do a lot of
9 walking. No military service.

10 THE COURT: Any clubs or organizations that
11 you may have been active in the past or present?

12 PROSPECTIVE JUROR: Yeah, youth football and
13 basketball.

14 THE COURT: So when you are involved in
15 those activities, are there times or have there been
16 times that decisions had to be made and they were made
17 by the group, you met, you talked about things, you
18 decided things?

19 PROSPECTIVE JUROR: Yes. With other coaches
20 and some parents.

21 THE COURT: And are you comfortable with
22 that process, kind of making a group decision?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Thank you. You may continue,
25 sir.

1 PROSPECTIVE JUROR: No military service. I
2 served as a juror on three cases; one civil and two
3 criminal.

4 THE COURT: How long ago -- or when was the
5 last service?

6 PROSPECTIVE JUROR: The last service was
7 2011.

8 THE COURT: Were you ever one of the jurors
9 who went into the jury room to deliberates?

10 PROSPECTIVE JUROR: Yes. On all three
11 cases.

12 THE COURT: And I don't want to know what
13 the verdict was, but I do want to know, was a verdict
14 reached?

15 PROSPECTIVE JUROR: On two cases, yes.

16 THE COURT: Were you ever the foreperson of
17 the jury?

18 PROSPECTIVE JUROR: No.

19 THE COURT: And how would you describe that
20 process of serving as a juror?

21 PROSPECTIVE JUROR: It was an experience,
22 good experience.

23 The grand jury, no. And --

24 THE COURT: Know anything about the facts of
25 the case other than what you heard here in the

1 courtroom?

2 PROSPECTIVE JUROR: No.

3 THE COURT: Have you formed any opinions
4 about the parties or their attorneys that would affect
5 your ability to be impartial?

6 PROSPECTIVE JUROR: No.

7 THE COURT: Thank you, sir.

8 Next. Juror No. 8.

9 PROSPECTIVE JUROR: Hi. My name is Cindy
10 Benavidez, B-E-N-A-V-I-D-E-Z. Place of residence is San
11 Pedro.

12 Employer's name is Rudys. I'm a waitress.
13 I've been a waitress for almost a year. Previous to
14 that, I was a kindergarten teacher.

15 THE COURT: How long did you serve as a
16 kindergarten teacher?

17 PROSPECTIVE JUROR: For about ten years. I
18 have served as the role of a supervisor for about seven
19 to ten employees.

20 THE COURT: Were you responsible for their
21 evaluations?

22 PROSPECTIVE JUROR: No, I was not.

23 THE COURT: So did you have input?

24 PROSPECTIVE JUROR: I did. I did have some
25 input.

1 THE COURT: Thank you. You may continue.

2 PROSPECTIVE JUROR: The highest education
3 level I had was some extension courses in college. I'm
4 single. There is one other adult in my household.

5 THE COURT: What's that adult's occupation?

6 PROSPECTIVE JUROR: Longshoreman.

7 THE COURT: You may continue.

8 PROSPECTIVE JUROR: I do not have any adult
9 children. I enjoy, as far as hobbies, gardening, a
10 little bit of cooking. I do not belong to any
11 organizations or clubs.

12 THE COURT: Have you in the past?

13 PROSPECTIVE JUROR: I have not, no.

14 THE COURT: Have you ever been in involved
15 in a situation where you were called upon to make a
16 decision with a group? So other people were involved --

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: -- you discussed things, you had
19 to come to some conclusions?

20 PROSPECTIVE JUROR: I believe so, yes.

21 THE COURT: Are you comfortable with that
22 process?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: All right. You may continue.

25 PROSPECTIVE JUROR: I have not been in the

1 military. I have not served as a juror nor in a grand
2 jury. And I do not have any facts regarding this case.
3 And no to No. 16 as well.

4 THE COURT: Thank you. At this time we do
5 need to seat another juror that will take the place of
6 the juror that was excused, identified as Juror No. 1.

7 So if the clerk would select the name,
8 please.

9 THE CLERK: Margarita Martinez,
10 M-A-R-T-I-N-E-Z.

11 THE COURT: So Ms. Martinez, you may remain
12 standing and answer the questions on the individual voir
13 dire form, please.

14 PROSPECTIVE JUROR: Okay. My name is
15 Margarita Martinez, M-A-R-T-I-N-E-Z. My place of
16 residency is Montebello, California. I am employed
17 Express, Inc. I am a service associate.

18 THE COURT: How long have you worked for
19 them?

20 PROSPECTIVE JUROR: For about three months.

21 THE COURT: Before that, were you employed?

22 PROSPECTIVE JUROR: Yes. I worked at Target
23 for one year.

24 THE COURT: Before Target?

25 PROSPECTIVE JUROR: I have been going to

1 school.

2 THE COURT: What were you studying?

3 PROSPECTIVE JUROR: Right now I'm pursuing a
4 degree in business administration, management.

5 THE COURT: All right. You may continue.

6 PROSPECTIVE JUROR: I have not worked in a
7 supervisor capacity. My highest level of education, I'm
8 still pursuing my degree in business. I am single.
9 There are adults. I live with my parents. He is -- my
10 dad is self-employed as a construction worker. My mom
11 is retired.

12 THE COURT: What was your mom's work before
13 retirement?

14 PROSPECTIVE JUROR: She used to work at a
15 factor. I'm not sure what name.

16 My sister also lives with us. She works at
17 a law firm here in downtown. I'm not familiar with the
18 name.

19 THE COURT: Let me just explore that with
20 you. How long has she worked for the law firm?

21 PROSPECTIVE JUROR: She has been working
22 there for about two years, I believe.

23 THE COURT: Do you know what her job is
24 there?

25 PROSPECTIVE JUROR: She works with

1 immigration. I'm not sure exactly what role she worked
2 there.

3 THE COURT: You may continue.

4 PROSPECTIVE JUROR: There are no adult
5 children. My hobbies would be playing softball. I have
6 never been part of a club. But I have been in an
7 organization in high school.

8 THE COURT: During those years, did that
9 organization meet, discuss things and vote on things?

10 PROSPECTIVE JUROR: Yes. Just our public
11 opinion on immigration.

12 THE COURT: Are you comfortable with that
13 process?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: You did meet with them and have
16 discussions and maybe take a position?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Okay.

19 PROSPECTIVE JUROR: I have no military
20 status. I'm not a member of a jury. Never been. I
21 have no other information or facts about this case. And
22 I have no opinions for number 16.

23 THE COURT: I asked general questions of the
24 other members of the panel. Some of you may have
25 made -- taken notes, and you may have done that. Is

1 there any additional information that you need to share
2 based upon other questions that were asked?

3 PROSPECTIVE JUROR: No additional
4 information.

5 THE COURT: You don't know any of the
6 parties or you don't recognize --

7 PROSPECTIVE JUROR: No.

8 THE COURT: -- any of the names of any of
9 these companies?

10 PROSPECTIVE JUROR: No.

11 THE COURT: The witness list that was read
12 to you or maybe persons mentioned during the trial, did
13 you recognize any of those names?

14 PROSPECTIVE JUROR: Just one of them. But
15 I'm not familiar with the face.

16 THE COURT: What was the name that you
17 recognized?

18 PROSPECTIVE JUROR: I don't remember his
19 name.

20 THE COURT: Why are you familiar with that
21 person?

22 PROSPECTIVE JUROR: Because he was -- I seen
23 him once on TV. But I'm not familiar --

24 THE COURT: How long ago would you have seen
25 that person on TV?

1 PROSPECTIVE JUROR: This was probably about
2 three months ago.

3 THE COURT: Do you remember anything
4 specific about what you might have seen?

5 Was this person an actor in a movie? Was
6 the person being interviewed by somebody else?

7 PROSPECTIVE JUROR: It was an actor in a
8 movie.

9 THE COURT: Do you remember the movie?

10 PROSPECTIVE JUROR: No, I do not.

11 THE COURT: All right. Thank you. Any of
12 the other questions I asked: Have you ever been a party
13 to a lawsuit?

14 PROSPECTIVE JUROR: No, no.

15 THE COURT: All right. Thank you.

16 So I'll see counsel at sidebar. You might
17 want to bring with you your proposed voir dire
18 questions, if there are additional questions that you
19 wish the Court to have.

20 MR. HUMMEL: Your Honor, there was -- I
21 spoke to the clerk, but -- sorry. This is Keith Hummel.
22 I wanted to revisit Juror No. 4. We had just before the
23 break. He was the fellow who had expressed some fandom
24 of Dan Aykroyd and listened to an interview with Howard
25 Stern. During the break, it concerned me that he had

1 said already that he would be more likely to believe
2 what Mr. Aykroyd would have said.

3 We went back to go back and look at the
4 transcript. There was actually a rather extensive
5 discussion with Mr. Aykroyd about Crystal Head Vodka,
6 about the creation of the vodka. He mentioned Mr.
7 Alexander and the bottle.

8 THE COURT: On TV or radio?

9 MR. HUMMEL: On the radio. We would like to
10 move to strike him for cause.

11 THE COURT: Or do we want to ask him more?

12 MR. HUMMEL: We can question him more about
13 what we believes, Your Honor, even if he doesn't
14 remember the details of the interview sitting here
15 today, when he starts hearing the evidence, he is going
16 to hear that evidence in the prism of what he heard from
17 that interview.

18 So at this point, I don't think there's much
19 to be done to rehabilitate him. He already heard fact
20 there was Crystal Head about Mr. Aykroyd's story, about
21 the fact that he has to sue others to enforce others his
22 trademark. He heard essentially the lawsuit and the
23 fact that there are lawsuits prior to walking in the
24 courtroom.

25 THE COURT: I don't know if that is the

1 case. Certainly we need to ask some more additional
2 questions. I think what you are reporting, you are
3 aware of that interview that he said he heard.

4 MR. HUMMEL: Yes, Your Honor.

5 THE COURT: And you believe based upon what
6 you know in that interview, they did cover some of these
7 subjects?

8 MR. HUMMEL: Yes, I have a transcript.

9 THE COURT: But what you want to know about
10 this juror is did he hear any of that.

11 MR. MILLER: He did mention this morning
12 that there may have been some discussion about the
13 vodka.

14 THE COURT: Right. I think we know.

15 MR. MILLER: We know he heard it.

16 THE COURT: Unless plaintiff counsel
17 believes he should be excused, I don't want to spend
18 time on something --

19 MR. BERG: I'm sorry. Didn't he express he
20 had an open mind about this, and he couldn't remember?
21 Maybe they said something.

22 THE COURT: I would be inclined to question
23 him more about what he remembers from that interview.

24 MR. HUMMEL: Yes, Your Honor.

25 THE COURT: It might have been a part of the

1 interview. It doesn't mean that he remembers it now,
2 and would be considering it in deciding. I think I just
3 need more information and this is not the time to
4 exercise challenges for cause. You can mention it any
5 time.

6 MR. HUMMEL: I apologize.

7 THE COURT: You would like to have
8 additional questions?

9 You would like to have the Court -- why
10 don't you identify the subject matter of this.

11 MR. HUMMEL: Sure. It was an interview that
12 Mr. Aykroyd gave with Howard Stern where Mr. Aykroyd
13 talks about the creation of the vodka, the story about
14 how he created the vodka, about the creation of the
15 bottle to whole hole the Crystal Head Vodka. I can read
16 at the end Mr. Stern said "great design" a lot of times.
17 You have to sue people, right? You have a good idea to
18 put in the school.

19 Dan Aykroyd, yeah.

20 Howard Stern, people keep trying to take
21 that idea, don't they?

22 Dan Aykroyd, they do, they do.

23 Quality of our beverage is so far superior
24 than anything they can try to imitate us, we feel very
25 secure.

1 Yeah, yeah, yeah.

2 Howard Stern said, I feel very secure for
3 you. Yeah. Yeah.

4 THE COURT: Okay.

5 MR. HUMMEL: People who tend to listen to
6 Howard Stern are avid fans of Howard Stern's
7 endorsements, there's a lot of things for people to
8 listen to him.

9 THE COURT: Maybe a reason for peremptory.
10 Let's ask him again.

11 MR. BERG: We have an issue --

12 THE COURT: Unless takes --

13 MR. BERG: We would before we strike a jury
14 number.

15 THE COURT: Four per side.

16 MR. BERG: In our objection, we are going to
17 bring case law in this.

18 THE COURT: You don't need to case law.
19 Tell me what the position is.

20 MR. BERG: There are line submitted joint
21 jury questions we have a binding agreement.

22 THE COURT: I'm not sure what you are
23 talking about.

24 MR. BERG: Oh, I'm sorry. Elements and
25 Ms. Brandi are aligned in this case. And for them to

1 get --

2 THE COURT: So what?

3 MR. BERG: I think it prejudices us.

4 THE COURT: Why? If you have four, they
5 have four.

6 MR. BERG: Oh, total four?

7 THE COURT: Total four.

8 MR. BERG: Then I withdraw my questions.

9 MR. MILLER: Put your case law in your
10 pocket.

11 THE COURT: Don't spend time we don't need
12 to spend.

13 THE COURT: Your Honor, would you ask Juror
14 No. 3. It is Juror No. 3.

15 MR. HUMMEL: 4.

16 THE COURT: Ask Juror No. 4 to come back.

17 MR. HUMMEL: May I raise one other thing?
18 Mr. Berg, you might want to listen. There was another
19 news item that was placed on the Crystal Head Vodka last
20 week which mentioned the lawsuits and which mentioned
21 the reversal and which mentioned explicitly that the
22 reversal was based on misconduct by an attorney -- it
23 was tequila and prior counsel. I brought it to
24 Mr. Berg's attention. He had it immediately taken down.
25 I confirmed it was taken down.

1 THE COURT: Let's wait a minute.

2 MR. HUMMEL: For us to raise it to see if
3 they have visited the website.

4 THE COURT: Sir, state your name.

5 PROSPECTIVE JUROR: Josh Massi.

6 THE COURT: I want to ask you about the
7 interview that you have recalled, and you mentioned that
8 you do remember an interview between Howard Stern and
9 Mr. Aykroyd.

10 Trying to figure out if you know, now that
11 you had a little break, can you remember anything more
12 about that interview, the subjects that might have been
13 directed at that interview that you shared with us
14 before.

15 PROSPECTIVE JUROR: No. I mean, he was
16 talking about his career. If anyone's heard Howard
17 Stern that's kind of how it goes, you know.

18 THE COURT: Do you recall whether there was
19 any discussion about vodka or tequila on that interview?

20 PROSPECTIVE JUROR: No, as I mentioned, the
21 only thing I can vaguely remember --

22 THE COURT: Keep your voice a little bit
23 soft.

24 PROSPECTIVE JUROR: I can vaguely remember
25 is talking about some kind of -- some kind of litigation

1 he is involved in. I don't remember the specifics or
2 anything.

3 THE COURT: Do you remember if there was any
4 mention of the bottle description, description of the
5 bottle in which the vodka or alcoholic beverage might
6 have been in?

7 PROSPECTIVE JUROR: Not that I can remember.

8 THE COURT: Do you remember that there was
9 some recollection to a lawsuit, a lawsuit or lawsuits
10 generally?

11 PROSPECTIVE JUROR: I mean, I listen to a
12 lot of his interviews. So I can't be specific. I
13 can -- I thought I remembered it. So when I saw him, I
14 kind of -- it jogged my memory, but I could be wrong.

15 THE COURT: Have you observed or listened to
16 any other interviews of Mr. Aykroyd?

17 PROSPECTIVE JUROR: Nothing that comes to
18 mind.

19 THE COURT: Was there a radio interview or
20 television interview?

21 PROSPECTIVE JUROR: Yes, radio.

22 THE COURT: Do you remember which station it
23 was on?

24 PROSPECTIVE JUROR: Yes, sir. Howard 100.

25 THE COURT: Is that something that you

1 regularly listen to?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Were you in the car driving at
4 the time?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: And so is that typically
7 entertainment that you would --

8 PROSPECTIVE JUROR: Uh-huh, listen to.

9 THE COURT: -- listen to while you are
10 driving?

11 PROSPECTIVE JUROR: Yep.

12 THE COURT: Can you tell us anything more
13 about your memory of this interview other than what you
14 already told us?

15 PROSPECTIVE JUROR: Nothing specific. Other
16 than, you know, like I said before, he came off, you
17 know, he seemed like a real likable guy. I really liked
18 him, listening to the interview. That's all I can
19 really say.

20 THE COURT: All right. Any additional
21 questions that either counsel would like for the Court
22 to inquire?

23 MR. HUMMEL: No, Your Honor.

24 MR. MILLER: I would ask this, if he heard
25 the entire interview.

1 THE COURT: Do you know, sir, how long you
2 listened to the interview?

3 PROSPECTIVE JUROR: I don't know. I
4 probably listened to pretty close to the whole thing. I
5 have a long commute. So it was probably around
6 45 minutes to an hour that I was listening. If I were
7 to guess.

8 THE COURT: So is your commute about
9 45 minutes to an hour?

10 PROSPECTIVE JUROR: On a good day.

11 THE COURT: Do you remember that you turned
12 it on as soon as got into the car?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Do you remember whether the
15 interview was taking place?

16 PROSPECTIVE JUROR: I heard the beginning of
17 it, so I can't remember if I listened to the full thing
18 or not.

19 THE COURT: And do you think you heard the
20 end?

21 PROSPECTIVE JUROR: I don't know.

22 THE COURT: All right. I don't have
23 anything else. But either counsel have something else?

24 MR. HUMMEL: Not from me, Your Honor.

25 THE COURT: No. All right. You may go back

1 to the jury box.

2 THE COURT: So, as I said, this is not time
3 for exercise challenges for cause. But if there is
4 something you want to put on the record now, while it is
5 fresh in your mind about this particular juror, you may
6 do so.

7 MR. HUMMEL: Yeah, Your Honor, I think that.

8 THE COURT: Not too loud.

9 MR. HUMMEL: People telling me to speak up.

10 So, Your Honor, the problem I have here is
11 that, you know, as he is reflecting on this he was
12 remembering more from the first time we spoke to him.
13 And I think, you know, we have a situation where we have
14 the juror in the box who at least has some preknowledge
15 about this case and facts of this case.

16 And as he is going to hear the testimony
17 from Mr. Aykroyd, from Mr. Alexander, and other facts of
18 this case, he is going to remember more of this
19 interview. And I am concerned that we have a juror
20 that's not going to come to this case with a full clean
21 slate. He is going to come with some bias, some
22 knowledge of the case; and, therefore, I think we should
23 strike him for cause.

24 THE COURT: You made your argument.

25 Anything else to be placed on the record? As I said, we

1 are not exercising challenges of any type at this point.
2 Fresh in your minds, put it on record.

3 MR. MILLER: I understand. John Miller.
4 The reason we started talking to Juror No. 4 was because
5 he raised his hand. And seven out of eight jurors knew
6 who Aykroyd was. He raised his hand and said, I formed
7 an opinion.

8 THE COURT: Because the Court made that
9 inquiry.

10 MR. MILLER: That is how it started. He
11 listened and specifically championed Mr. Aykroyd's
12 rights to protect his rights of the copyright on the
13 skull we'll argue later.

14 THE COURT: We may not argue later. But you
15 put on the record what you recall and the point you
16 wanted to make. So we are at that point if there are
17 additional questions that either side wishes to have the
18 Court propound to the jurors, identify them.

19 MR. BERG: Both sides asked for a question.

20 THE COURT: Where would you find it?

21 MR. BERG: Look to the defense. No. 2.

22 THE COURT: Number 2.

23 MR. BERG: Yes, ma'am. Both sides asked a
24 sense of that question.

25 THE COURT: Just because both sides agreed

1 does not mean the Court agrees.

2 MR. BERG: No, no. That's right.

3 THE COURT: I can ask that.

4 MR. BERG: All right. And --

5 THE COURT: So I have both sides proposed
6 voir dire questions with me now.

7 So if there is another question that you
8 would like to have me ask, if you identify it by whether
9 it is plaintiff or defendant and its number.

10 MR. BERG: Your Honor, counsel, in No. 9 of
11 the plaintiff proposed questions.

12 THE COURT: Let me get that.

13 MR. BERG: Yes, ma'am.

14 THE COURT: If you don't think that is the
15 question that the Court needs to ask, they will be
16 instructed they have to follow these instructions.

17 MR. BERG: Okay.

18 THE COURT: Any others?

19 MR. BERG: None from the plaintiffs.

20 THE COURT: How about from the defense, any
21 additional questions?

22 MR. HUMMEL: No, Your Honor.

23 THE COURT: No.

24 MR. HUMMEL: Thank you.

25 THE COURT: I do have one additional

1 question. So we'll go back on the record for that
2 question.

3 And the question is this: Do any of you
4 find the lawful consumption of alcoholic beverages to be
5 against your personal or moral beliefs?

6 The question is: Do any of you find the
7 lawful consumption of alcoholic beverages to be against
8 your personal or moral beliefs?

9 If your answer is yes to that question, just
10 raise your hand. And I can inquire further.

11 We have one juror. So I will inquire of the
12 juror at sidebar.

13 Anybody else that's on the panel?

14 THE COURT: It would be Juror No. 5. If you
15 will come to sidebar, sir.

16 (SIDEBAR.)

17 THE COURT: Just state your name for the
18 record, please.

19 PROSPECTIVE JUROR: Kevin Van.

20 THE COURT: Spell your last name.

21 PROSPECTIVE JUROR: Van, V-A-N.

22 THE COURT: Mr. Van, you heard the question.
23 It is against your personal or moral beliefs?

24 PROSPECTIVE JUROR: I have two uncles that's
25 an alcoholic.

1 THE COURT: You have to -- court reporter
2 can hear you.

3 PROSPECTIVE JUROR: I have two uncle one of
4 them alcoholic always giving me and my dad trouble. He
5 get drunk all the time. My second is kind of half
6 alcoholic and same thing, they get home direction and
7 start talking bad of family.

8 I grew up, I don't drink, I don't smoke. I
9 grew up alcohol is nothing but bad in my opinion.

10 THE COURT: Let me just explore your answer.
11 So the question was the lawful consumption of alcoholic
12 beverages is that against your personal or moral
13 beliefs?

14 PROSPECTIVE JUROR: More personal.

15 THE COURT: Sorry.

16 PROSPECTIVE JUROR: More like personal.
17 That I believe.

18 THE COURT: Personal beliefs.

19 PROSPECTIVE JUROR: Yes. So what is that
20 personal belief?

21 PROSPECTIVE JUROR: Believe once you consume
22 alcohol you no longer control yourself, and you can
23 get -- you know, do anything. I witness two of my
24 uncle, you know, what's physical abusive or verbally I
25 seen both in my uncle.

1 THE COURT: So I think what you're
2 explaining from your personal experience that you've
3 seen people --

4 PROSPECTIVE JUROR: Correct.

5 THE COURT: -- that you think have consumed
6 alcohol or too much alcohol?

7 PROSPECTIVE JUROR: I seen my friend get
8 drunk over the weekend. Next thing they are divorced.

9 THE COURT: Let me ask the question this
10 way: What would be your feeling about people who are
11 responsible, say, for selling alcohol? So let's just
12 take a liquor store, for instance, that you might have
13 in your neighborhood or any neighborhood. Do you have
14 any thoughts about --

15 PROSPECTIVE JUROR: I did.

16 THE COURT: Wait just a moment. Let me
17 finish.

18 Do you have negative thoughts about people
19 who own liquor stores? Let start with ownership first.

20 PROSPECTIVE JUROR: I grew up in
21 Los Angeles.

22 THE COURT: Wait. I want to ask you
23 specific question. So the owner of a liquor store,
24 what's your thought or belief or concern about that
25 person who owns a liquor store?

1 PROSPECTIVE JUROR: I seen kids under age
2 buy liquor in the liquor store, and you know, obviously
3 the owner violated the law, you know. Seen kids go in
4 and out with liquor. So -- shouldn't be liquor store
5 owner.

6 THE COURT: That was the next question I was
7 going to ask. If you were the person that would have
8 control over this, would you outlaw liquor stores?

9 PROSPECTIVE JUROR: I would enforce more
10 penalty. I don't know what the current penalties is.
11 But I would be a lot more stricter.

12 THE COURT: Stricter when you feel they have
13 violated the law, such as selling alcohol to minors; is
14 that what you are referring to?

15 PROSPECTIVE JUROR: Yes. Plus that I go to
16 liquor store, I get, you know, chips and all that. I
17 see like 500 liquor display right in the front. That
18 bug me too.

19 THE COURT: What do you mean right in front?

20 PROSPECTIVE JUROR: Alcohol. Liquor, the
21 bottle.

22 THE COURT: The liquor contained in the
23 bottles in the store?

24 PROSPECTIVE JUROR: Correct.

25 THE COURT: I think what you are saying you

1 may go to the store to buy something else and others
2 might go to the store to buy something else.

3 Wait just a moment.

4 When you walk in the store, you are
5 confronted with these containers of alcoholic beverages?

6 PROSPECTIVE JUROR: First. Then I saw --

7 THE COURT: Wait. And so how do you feel
8 about that?

9 PROSPECTIVE JUROR: I feel it is too much.

10 THE COURT: So how would you control that?
11 What would you do if you were in charge and you could
12 control that? What would you do?

13 PROSPECTIVE JUROR: You know, I don't know.
14 You know, it is a freedom country. I felt like I guess
15 they have the right to do all that. It is just my
16 personally walk in the whole wall is alcohol.

17 THE COURT: Okay. Let me ask this question:
18 If you heard evidence in this case that some party in
19 the case -- or parties in the case actually are
20 responsible in some way for alcoholic beverages sold in
21 containers, containers may be the issue in this case,
22 not the beverage itself. Would you be inclined to find
23 in favor or against that person or persons that you
24 thought may be responsible for alcoholic beverages being
25 disseminated?

1 PROSPECTIVE JUROR: Yes. I would say yes.

2 THE COURT: So if you heard that they both
3 are engaged in this business, what would your position
4 be there?

5 PROSPECTIVE JUROR: Who that party to say,
6 take responsibility for that. In fact it happened right
7 at my house too. My back house. They have party and
8 sell unlimited alcohol. They throw over my fence by
9 10:00 o'clock helicopters and they get busted. But to
10 me those people should be in jail, in my opinion.

11 THE COURT: Do you know that this case is
12 not about who sells alcohol or selling alcohol?

13 PROSPECTIVE JUROR: Correct.

14 THE COURT: The case is going to be more
15 about the container in which the alcohol is sold.

16 PROSPECTIVE JUROR: Right.

17 THE COURT: You understand that?

18 PROSPECTIVE JUROR: You're correct.

19 THE COURT: Assuming that's correct, that's
20 what the case is about, how would the sale of alcohol
21 become a part of your considerations in deciding the
22 issues in the case, if the case is not about selling
23 alcohol, but more about the container in which the
24 alcohol is sold? Can you separate the selling of
25 alcohol from the issues in this case?

1 PROSPECTIVE JUROR: If could give you
2 percentage, probably 15 percent no.

3 THE COURT: Okay. Thank you, sir.

4 Anybody else have any questions that you
5 would like for me to propound?

6 MR. HUMMEL: Your Honor, Keith Hummel.

7 THE COURT: Uh-huh.

8 MR. HUMMEL: The only question whether
9 Mr. Van has any particular stronger feelings about
10 certain types of liquor or alcohol than others?

11 THE COURT: Okay, I'll ask that. Sir, is it
12 just the selling or consumption of any alcoholic
13 beverage? Or is there a specific type of alcohol
14 beverage that you object to?

15 PROSPECTIVE JUROR: I don't drink, so
16 honestly I don't know. But I know my uncle, he drinks
17 Budweiser. I guess that's beer. And he drinks liquor.
18 He calls cognac. I have no idea what it is.

19 THE COURT: Let me try to ask that question
20 again. Is it the fact that alcohol beverages are sold
21 and consumed? Or is your belief, based on a particular
22 type of alcohol, be it beer or whiskey?

23 PROSPECTIVE JUROR: No, I don't think it
24 matter. Alcohol is alcohol in my opinion.

25 THE COURT: Doesn't matter what type?

1 Any other inquiry?

2 MS. BIVENS: Yes, we would like to know how
3 he would feel about people who manufacture alcohol as
4 opposed to selling it. And that's the first question.

5 The second one is people who advertise or
6 market alcohol as opposed to selling it.

7 THE COURT: Okay. So I'll try to make that
8 inquiry. Lots of people involved in maybe the alcohol
9 business, some may sell alcohol, some may advertise
10 alcohol, some may manufacture alcohol, so you have
11 expressed you don't drink and you're opposed to people
12 who do, if I understand what you are saying.

13 PROSPECTIVE JUROR: Correct.

14 THE COURT: Is your opposition to those who
15 manufacture it, those who sell it, those who advertise
16 it? Who are you objecting to?

17 PROSPECTIVE JUROR: Tough question. Like I
18 say, you ask me 15 percent, starting from making it.

19 THE COURT: I think I'm not understanding
20 your answer. Is it all of them --

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: -- or some of them?

23 PROSPECTIVE JUROR: All. Engineering root
24 cause. The root cause is making it. And sale. It is
25 all the same to me.

1 THE COURT: Thank you.

2 Any other inquiry?

3 Sir, you may go back to the box. Thank you.

4 So we ask have a discussion fresh in your
5 mind. As I said, we are not at the for cause. But you
6 may want to put on the record whatever the argument
7 would be when it is time to exercise peremptory for
8 cause.

9 So plaintiff have anything that you wish to
10 put on the record?

11 MR. BERG: No, Your Honor. That was
12 interesting to what he had to say. Changed my --

13 THE COURT: What is your feeling on him now?

14 MR. BERG: I would not exercise a challenge.

15 THE COURT: He is not one that you think
16 should be excused at this point based on his responses?

17 MR. BERG: I do not. I do not.

18 THE COURT: Based on responses given.

19 MR. HUMMEL: Based on responses, I don't
20 think he strike for cause.

21 THE COURT: No one feels differently. Okay.

22 (OPEN COURT.)

23 THE COURT: We can go back on the record at
24 this time. I asked all the questions I intend to ask of
25 the jurors at this point.

1 And counsel have identified one area of
2 inquiry and asked that question too. Unless counsel has
3 additional questions that you would like for me to
4 propound of the jury we would be at a point of
5 exercising for cause.

6 Plaintiff have any follow-up questions that
7 you wish me to propound to any of the jurors?

8 And if so, if it is a written question, you
9 can identify it by just giving me the number, and I can
10 probably find it.

11 MR. BERG: Your Honor, should we bring the
12 question to the bench?

13 THE COURT: I don't think so. If you just
14 tell me the number of the question, wherever it appears.
15 You don't have to identify who propounded the question.
16 I can probably find it.

17 MR. BERG: It was not in our list of
18 proposed questions.

19 THE COURT: There are additional questions?

20 MR. BERG: Yes, ma'am.

21 THE COURT: Okay. You come to sidebar.

22 (SIDEBAR.)

23 THE COURT: So I actually thought we were
24 past this point. So I did ask, are there any follow-up
25 questions, any additional questions. And so the one

1 that you identified, was that question No. 2 that I did
2 ask. So I just want to be clear, I have asked all the
3 questions that I intend to ask at this point. So if
4 there are any additional questions, that's what I want
5 to know.

6 MR. BERG: Yes. I had, Your Honor. First
7 of all, I don't mean to delay the Court.

8 THE COURT: No. It is fine.

9 MR. BERG: Ms. Martinez said she was in an
10 organization in high school. I just would like to know
11 what the organization is.

12 THE COURT: Which juror are we talking
13 about?

14 MR. BERG: The number No. 1.

15 THE COURT: And you want to know about her
16 high school organization?

17 MR. BERG: Yes, ma'am. And she said they --

18 THE COURT: Okay.

19 MR. BERG: And she said she is pursuing a
20 business management degree. I wanted to know a little
21 more about her education, because I didn't hear that
22 there had been anything preceded that. And I wanted to
23 know about her educational background.

24 THE COURT: What do you want to know about
25 her education? She is pursuing a degree in business

1 administration or business management. You want to know
2 did she go to high school?

3 MR. BERG: Yes, ma'am. I just want to know
4 the background.

5 THE COURT: Okay.

6 MR. BERG: That is all for me.

7 MR. HUMMEL: Nothing for me.

8 THE COURT: No follow-up?

9 MR. MILLER: No.

10 (SIDEBAR CONCLUDED.)

11 THE COURT: We can go back on the record.
12 So the question that I have is for our last juror to be
13 seated, who is now sitting in the seat of No. 1. So I
14 would like to explore about what you are pursuing now
15 educationally and what your other education that you
16 already have.

17 So if we can pass the mic down. My
18 understanding is that you are a student now; is that
19 correct?

20 PROSPECTIVE JUROR: Yes, that's correct.

21 THE COURT: And you are studying business
22 administration or business management?

23 PROSPECTIVE JUROR: Business management.

24 THE COURT: What degree are you expecting to
25 receive once you complete your studies?

1 PROSPECTIVE JUROR: Right now, bachelor
2 degree.

3 THE COURT: Okay. Where are you in
4 relationship to the time you will complete that degree?

5 PROSPECTIVE JUROR: This is my second year.
6 So about two years and a half to be done.

7 THE COURT: What is your prior education
8 before pursuing that bachelor's degree?

9 PROSPECTIVE JUROR: Prior education would be
10 high school diploma.

11 THE COURT: High school diploma. And now
12 you are working on a bachelor degree that is a four-year
13 program. Correct?

14 PROSPECTIVE JUROR: Yes, that's correct.

15 THE COURT: And did you indicate that you
16 belonged to an organization in high school.

17 PROSPECTIVE JUROR: Yes. It was more like a
18 club.

19 THE COURT: What kind of club? Like a
20 social club or academic club?

21 PROSPECTIVE JUROR: It was a social club.

22 THE COURT: Did that organization have
23 meetings, discuss things that the group wanted to do,
24 take votes on things?

25 PROSPECTIVE JUROR: Yes. It was an

1 organization over immigrants and protesting and so
2 forth.

3 THE COURT: That was a high school
4 organization that you participated in, correct?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: So how many years have you been
7 out of high school?

8 PROSPECTIVE JUROR: This will be two years.

9 THE COURT: Do you still belong to that
10 organization or some other organization that's similar?

11 PROSPECTIVE JUROR: No, not any more.

12 THE COURT: What was the purpose for that
13 organization, the primary purpose?

14 PROSPECTIVE JUROR: The primary purpose -- I
15 just wanted to be involved in the organization around
16 that time in high school.

17 THE COURT: The focus of that organization
18 was immigration?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: Immigration rights?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: You wanted to be a part of that?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Since high school, you have not
25 joined any club or organization like that one or any

1 other one?

2 PROSPECTIVE JUROR: No, not anymore.

3 THE COURT: The Court has made inquiry. So
4 again I will ask: Are there any additional questions
5 that either side wishes me to propound to the jury
6 before we exercise peremptories for cause -- or
7 challenges for cause?

8 MS. BIVENS: No, Your Honor.

9 THE COURT: Okay. Thank you. Now, we are
10 ready for counsel to come to sidebar and have a
11 discussion about which, if any, jurors should be
12 excused.

13 (SIDEBAR.)

14 THE COURT: For cause plaintiff.

15 MR. BERG: Pass.

16 THE COURT: Pass.

17 Defendant.

18 MR. HUMMEL: Keith Hummel. Juror No. 4,
19 Mr. Massi, for the reasons previously stated.

20 THE COURT: Other.

21 MR. MILLER: I join.

22 THE COURT: And plaintiff wish to be heard
23 on that?

24 MR. BERG: Just very briefly, Your Honor.
25 He never changed the belief he could keep an open mind

1 even after you discussed the subject matter. Just
2 doesn't -- from a radio show he does not remember. The
3 mention of litigation may not have anything to do
4 anything with this.

5 THE COURT: I understand that what defense
6 counsel is concerned about. He may not remember now,
7 but when he listens to testimony and sees the witnesses,
8 he may then remember.

9 So we had this just in the last jury just
10 last two weeks ago, I guess. It was a juror who thought
11 he recognized the name of somebody but wasn't sure. And
12 then later he said no, no, it is not the same person.
13 So he was not on the panel. In the jury box hearing
14 testimony, not deliberating and then decided he actually
15 did recognize a person that he thought he had recognized
16 earlier. And I ultimately excused him after questioning
17 him because he felt that he could not be fair and
18 impartial.

19 Now that he had seen the individual, he had
20 heard the testimony.

21 So here what we are talking about is some
22 interview that took place, and he is maybe not
23 remembering all the details. But if that subject matter
24 is likely to come up at trial, and I don't know if it
25 will be, then he is likely to remember more. So we may

1 find ourselves back here discussing same juror again. I
2 think that's --

3 MR. HUMMEL: Exactly.

4 THE COURT: We don't know what will happen.
5 Maybe counsel, just for this record, how would that --
6 strike that.

7 Would the subject of this interview come up?

8 MR. HUMMEL: I don't know if the -- Keith
9 Hummel. I don't know if the subject of the interview
10 would come up or not. Obviously it is something that
11 Mr. Aykroyd can be cross-examined with. It may well be
12 a subject of testimony and Mr. Aykroyd takes the stand.

13 You've already seen that PROSPECTIVE JUROR
14 started to remember more about this interview from the
15 first time you spoke to him, from the second time he
16 spoke to him. I am concerned that he already has said
17 that he would be predisposed the first time we spoke to
18 him to believe something that Mr. Aykroyd may have said.

19 I am concerned of a cumulative effect of
20 fandom of Mr. Aykroyd and products may have influenced
21 his mind so he doesn't approach this case with a clean
22 slate, which is frankly prejudicial to my client.

23 THE COURT: I vaguely remember this
24 witnesses testimony last time I don't remember him being
25 on the stand very long. I don't remember the area of

1 examination. Would it be plaintiff counsel calling him
2 as a witness.

3 MR. BERG: I'll call Mr. Aykroyd.

4 THE COURT: Yes. What was the subject just
5 generally of your examination of him.

6 MR. BERG: The general subject matter would
7 be the work that was put into promoting and bringing
8 Crystal Head Vodka to the market and promoting it.
9 There would be no specific reference anything of said in
10 the interview and anyone could cross-examine on him
11 helpful to us.

12 THE COURT: How long do you estimate your
13 examination of him will be?

14 MR. BERG: We are putting him on toward the
15 end. So I think it will be shortened by -- because the
16 story will have been told. Maybe -- I don't want to be
17 held to this -- 40 minutes to an hour, maybe. But I do
18 believe it will be very much circumscribed by all the
19 testimony before.

20 THE COURT: So will his testimony -- that he
21 is responsible in any way for the creation of the varied
22 design?

23 MR. BERG: He contributed to the design.
24 John Alexander, our first witness, is the artist whose
25 idea it was he contributed by saying, Let's make it this

1 way or that way. But the -- his real contribution was
2 business, business acumen, finding the right
3 manufacturer.

4 THE COURT: Anything else?

5 MR. HUMMEL: May I be heard?

6 THE COURT: Yes.

7 MR. HUMMEL: Dan Aykroyd is the driving
8 force behind Crystal Head Vodka and Cloverfield
9 (phonetic).

10 Mr. Berg just said that he doubts anybody
11 would cross-examine Mr. Aykroyd with that interview
12 because it would be helpful to them. That's precisely
13 my concern. That's precisely my concern that this
14 witness has already heard the interview that Mr. Berg
15 says helps him. And as we go through this trial, he is
16 going to remember more and more of it. He already has a
17 positive attitude toward Mr. Aykroyd. He is already
18 inclined to believe him. That's precisely the prejudice
19 I would like to void. Strike the witness.

20 THE COURT: Court does not find good cause
21 has been shown so we will not excuse him for cause.

22 We are now at the point you would be using
23 the peremptory. So the plaintiffs has the first
24 peremptory. There are four peremptory per side. The
25 defendant will exercise there jointly. So that's where

1 we are.

2 MR. BERG: Your Honor, if I may inquire.
3 May we have few moments to consider?

4 THE COURT: Sure. We will sit here and do
5 that.

6 MR. BERG: Thank you.

7 May we approach, Your Honor?

8 THE COURT: I don't think you need to
9 approach the lectern to --

10 MR. BERG: To hand in our strike.

11 THE COURT: Why don't you approach.

12 MR. BERG: Do you --

13 THE COURT: Wait just a minute.

14 MR. BERG: Oh, sorry.

15 THE COURT: So I will let you come back up
16 because I'm not sure we are on the same page.

17 So one method is that all the peremptories
18 would be exercised at the same time, and counsel would
19 write down the persons that you want excused. And they
20 would be excused. And evidently that's what plaintiff's
21 counsel thinks we are doing. My thought was you would
22 each exercise them individually.

23 MR. HUMMEL: Yes.

24 THE COURT: I don't mind doing it either
25 way. But my thought was that we would just do it

1 individually. So you won't be exercising all your
2 strikes now. You would exercise one, and then to the
3 defense, and back to the plaintiff, and back to the
4 defense.

5 MR. HUMMEL: That's what I understand Your
6 Honor to be doing.

7 MR. BERG: David Berg. I understood -- I
8 didn't know we would do that aloud or --

9 THE COURT: You just do it aloud and step to
10 the lectern and ask the Court to thank and excuse
11 whoever you wish to excuse. But it is just one.

12 MR. BERG: Thank you.

13 (OPEN COURT.)

14 THE COURT: Plaintiff's counsel.

15 MR. BERG: David Berg for plaintiff strikes
16 No. 8.

17 THE COURT: Ms. Benavidez. Yes. The Court
18 thanks you for being willing to serve as a juror in the
19 case. That means you are being excused from this case.

20 I will still instruct you to report to the
21 jury room for further instructions. Thank you for being
22 willing to serve.

23 THE COURT: At this time, the clerk would
24 call the name of another prospective juror in the seat
25 of No. 8.

1 THE CLERK: Bruce Gordon, G-O-R-D-O-N.

2 THE COURT: Mr. Gordon, we are going to get
3 the mic to you. And why don't we start with the
4 individual voir dire questions so that you answer those
5 first.

6 PROSPECTIVE JUROR: Yes, Bruce Gordon.
7 G-O-R-D-O-N.

8 Place of residence, Summerland, California.
9 My employer's name is Continental Advance Light Art
10 Solutions. I am a software engineer. Before that I was
11 in school. I did work for UC Santa Cruz for about
12 six months as a grader before that, during that time. I
13 have not served in a supervisor capacity. My highest
14 level of formal education is a bachelor's degree. My
15 marital status is single. There is one other adult in
16 my household. He is a self-employed writer.

17 I have no adult children. I have in the
18 past been part of a community service organization
19 called the Rotaract Club of Santa Cruz County. We did
20 meet to have votes, usually on the way to direct our
21 community service. I do not have any military service,
22 I have never served as a juror in a criminal or civil
23 case, nor as a member of a grand jury. I don't have any
24 information on the case nor any formed opinions on the
25 case.

1 THE COURT: So your degree is in what?

2 PROSPECTIVE JUROR: Computer engineering.

3 THE COURT: And, sir, I asked some general
4 questions just of all the prospective jurors. Were
5 there any questions that I asked on which you might have
6 written down, taken a note or something? Or as you
7 remember those questions, you need to share your answers
8 so that we can better understand?

9 PROSPECTIVE JUROR: As far as familiarity
10 with names, I have the same familiarity with the name
11 Dan Aykroyd has been intimated by other members of the
12 panel. I know the name in the capacity of a known
13 actor. And I have no specific recollection of it. I
14 don't even remember how long it's been since I heard the
15 name. And I have no formed opinions.

16 THE COURT: So if he should testify as a
17 witness in the case, and if it is your responsibility as
18 a juror to judge credibility of witnesses; in other
19 words, whether I believe what the witness said, whether
20 I disbelieve, I believe some of it, I don't believe all
21 of it, could you use the same standard, whatever
22 standard you choose, to reflect on belief or not belief
23 and how much weight it should be given to their
24 testimony, use that same standard for all the witnesses
25 who testify regardless of their occupations?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: And, sir, have you ever been a
3 party to a lawsuit?

4 PROSPECTIVE JUROR: No.

5 THE COURT: And I assume that you don't
6 recognize the entities that have been identified as
7 being the plaintiffs and defendants in the case?

8 PROSPECTIVE JUROR: No.

9 THE COURT: Nor the defendant, Kim Brandi?

10 PROSPECTIVE JUROR: No.

11 THE COURT: And you didn't recognize any of
12 the lawyers as anyone that you might know?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Do you have any belief or
15 opinion on the consummation of alcohol?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Or the manufacture of alcohol or
18 the selling of alcohol?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Have you ever purchased or
21 consumed Crystal Head Vodka or KAH Tequila?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Have you seen those displayed in
24 any store that you can recall?

25 PROSPECTIVE JUROR: No.

1 THE COURT: Have you or anyone that you know
2 owned a registered or unregistered trademark or trade
3 dress?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Have you or anyone you know ever
6 been accused of an infringement?

7 PROSPECTIVE JUROR: No, not that I'm aware
8 of.

9 THE COURT: All right. Thank you, sir.
10 Any additional follow-up questions that
11 plaintiffs' counsel would like to have the Court
12 propound to Juror No. 8?

13 MR. BERG: No further questions from us.

14 THE COURT: Any additional questions
15 defendants' have?

16 MR. HUMMEL: No, Your Honor.

17 MR. MILLER: No, Your Honor.

18 THE COURT: All right. The peremptory is
19 with the defense.

20 MR. HUMMEL: Keith Hummel for Elements also
21 speaking on behalf of Mr. Miller for Ms. Brandi. We
22 would ask the Court to excuse and thank Mr. Massi, Juror
23 No. 4.

24 THE COURT: Mr. Massi, thank you for being
25 willing to serve in the case. You are excused at this

1 time. And you will report back to the jury office.

2 The clerk will select a name of a
3 prospective juror to be seated.

4 THE CLERK: Andrea Gomez Oxman, G-O-M-E-Z,
5 O-X-M-A-N.

6 PROSPECTIVE JUROR: My name is Andrea Gomez
7 Oxman.

8 THE COURT: Good afternoon.

9 PROSPECTIVE JUROR: Good afternoon.

10 THE COURT: So we'll start with the
11 individual voir dire questions.

12 PROSPECTIVE JUROR: So Andrea Gomez Oxman.
13 Last name is G-O-M-E-Z, O-X-M-A-N. Not hyphenated.
14 Place of residence, Manhattan Beach. My employer name
15 is the law office Maureen Ashad in Torrance. I'm an
16 attorney. I have been working as an attorney for the
17 last ten years.

18 Prior to my current position, I was the
19 managing attorney at the Rocky Mountain Immigrant
20 Advocacy network. It's a nonprofit organization that
21 works with low income immigrants, in Colorado.

22 I have worked in a supervisory capacity.
23 I'm currently a supervisor. I have been a supervisor
24 probably for the last five years. I have a JD, a double
25 bachelor's in science. And I started a master's. I'm

1 married. I have no adult -- oh, yeah. There is an
2 adult residing in my household, my husband, although he
3 travels a lot. He is the CEO of a technology start-up
4 that sells wine.

5 I belong to the American Immigration Lawyers
6 Association, the Los Angeles County Bar Association, the
7 Parent Teacher Organization at my daughter's school. I
8 have not served in the military. I have not served as a
9 juror, although I would love to. I've never been a
10 member of the grand jury. I don't have -- well,
11 actually, I do have some information. Some of the other
12 questions that you asked.

13 THE COURT: So let me stop you for a moment.
14 Now are you responding to the question that says, Other
15 than what you were told here today, do you have any
16 information about the facts of this case?

17 Is your answer yes?

18 PROSPECTIVE JUROR: No.

19 THE COURT: And then the last question, have
20 you formed any opinions about the parties or the
21 attorneys that would affect your ability to be
22 impartial?

23 PROSPECTIVE JUROR: I have not.

24 THE COURT: There's additional information
25 that you wish to share with the Court just based upon

1 other questions that were asked?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Why don't you share.

4 PROSPECTIVE JUROR: Yes. With regards to
5 whether we recognize Dan Aykroyd, I do. But preferably
6 I don't remember even the last movie that I have
7 watched. Like I said, my husband is in the food and
8 wine industry. And he sells wine. So we do have quite
9 a few trade dresses, both personally as well as -- that
10 are part of the company. And I'm on the licensing
11 through the ABC Board.

12 I own skull vodka. In fact, it's on my
13 shelf right now. It was given to me as a gift.

14 We have been a party to the lawsuit, both
15 regarding trade infringement as well as other lawsuits.
16 And as an attorney, I represent clients in Court. I was
17 a criminal defense attorney, and now I'm an immigration
18 attorney primarily doing removal defense.

19 Yes, work in the alcohol industry. I was a
20 bartender in college. My husband owns a wine company.
21 I have lots of -- I have a few friends who own wine and
22 spirits company as well.

23 And with regard to the ability to serve as
24 impartial juror, I think the dates that I mentioned
25 would cause a hardship for me. I am also a mom, and the

1 dates that you mentioned cause a problem for me because
2 it is days that I don't have child care.

3 THE COURT: Why don't we take the last one.
4 So I'm going to ask you to come to sidebar so I can
5 explore that question with you before asking any other
6 questions.

7 (SIDEBAR.)

8 THE COURT: Just state your name for the
9 record. The mic is here so the court reporter can hear
10 you.

11 PROSPECTIVE JUROR: Andrea Gomez Oxman.

12 THE COURT: So the time commitment to the
13 case, how old are your children? How many children?

14 PROSPECTIVE JUROR: Sure. I have two
15 children. One is just over a year old, a year and two
16 weeks. And a seven year old. And I only work part-time
17 two days a week. And the rest of the time I am the
18 primary caretaker. And during the time that you said
19 Court will be in session, my husband will be away most
20 of the week next week, so --

21 THE COURT: So is it next week that causes
22 you concern that we would be in session Tuesday,
23 Thursday, and Friday? So those are days that your
24 husband will not be --

25 PROSPECTIVE JUROR: He'll be out of town

1 most of the week next week. He is out of town today,
2 but I do have child care today. I don't have child care
3 tomorrow.

4 THE COURT: Who assists you with the
5 children when your husband is not in town and you are
6 working.

7 PROSPECTIVE JUROR: I have a nanny.

8 THE COURT: And the nanny only comes --

9 PROSPECTIVE JUROR: She works for another
10 family so she comes on Tuesdays and Thursdays. From
11 time to time I can find a babysitter, but I have not
12 planned that far in advance.

13 THE COURT: So you wouldn't have child care
14 to cover you tomorrow if you were selected for this?

15 PROSPECTIVE JUROR: Possibly. I would have
16 to find child care.

17 THE COURT: Is that something that you think
18 you could do and willing to do, that is find child care?

19 PROSPECTIVE JUROR: It would be difficult.

20 THE COURT: Have you been in this position
21 on previous occasions when you were working, your
22 husband was away, and you had to provide for the
23 children, how did you manage that?

24 PROSPECTIVE JUROR: I just went back two
25 weeks ago when my son turned one. I was on maternity

1 leave for a year. Before that managing attorney
2 position where my job was flexible and maternity on
3 that. So trying to balance.

4 THE COURT: As I understand it, you do not
5 have a regular person that assists you in the home with
6 the children other than the nanny that is shared with
7 another family?

8 PROSPECTIVE JUROR: Correct.

9 THE COURT: Certain days the nanny is at
10 your house and other days with the other family?

11 PROSPECTIVE JUROR: Correct.

12 THE COURT: And tomorrow, Wednesday, one of
13 the days she would not be available to you?

14 PROSPECTIVE JUROR: Correct.

15 THE COURT: And then if we looked next week,
16 schedule days next week, that the nanny wouldn't be
17 available to you, your husband is not available, and you
18 don't have child care?

19 PROSPECTIVE JUROR: Correct.

20 THE COURT: I would be willing to agree to
21 excuse PROSPECTIVE JUROR.

22 MR. HUMMEL: I agree, Your Honor.

23 MR. BERG: I agree, Your Honor.

24 THE COURT: Thank you for being willing.

25 (SIDEBAR CONCLUDED.)

1 (OPEN COURT.)

2 THE COURT: So the Court would thank and
3 excuse our present Juror No. 4.

4 I would ask the clerk to select a name to be
5 seated in that seat.

6 THE CLERK: Luke Vincent Sisak, S-I-S-A-K.

7 THE COURT: So, sir, if you will stand and
8 answer the individual board there are questions first.

9 PROSPECTIVE JUROR: Good afternoon, Your
10 Honor. My name is Luke Sisak, S-I-S-A-K. I live in
11 West Los Angeles. I'm employed by the Los Angeles
12 County District Attorney's Office. I am a deputy DA.
13 I've worked there for ten years, though I do on a varied
14 part-time basis also teach self-defense. I supervise
15 law clerks semester to semester. I do have significant
16 input on that ultimate decisionmaking on hiring them or
17 not. I have a JD. I actually went to school with the
18 last juror, oddly enough.

19 I live alone. I am unmarried and always
20 have been. No kids. My only current organization is
21 the Association of Deputy District Attorneys, which is
22 my union. There are meetings. I do not go, though I do
23 vote. There have been others in the past but none I'm
24 currently a member of. Never served in the military or
25 on any kind of jury. No further information. And have

1 formed no opinions.

2 THE COURT: How about the general questions
3 that the Court asked earlier? Are there any of them
4 that you need to answer them so we can understand your
5 response?

6 PROSPECTIVE JUROR: Yes, Your Honor, thank
7 you. I do recognize Mr. Aykroyd. Probably have heard
8 his name in the last nine months. It won't affect my
9 ability to be fair. I personally have been party to a
10 lawsuit as has my mother in a separate suit. Hers was
11 regarding family inheriting a very small amount of real
12 estate and fighting over it. I don't know exactly how
13 it turned out. It was in Rhode Island. That's all I
14 know. Mine was a federal case here in this district for
15 vindictive prosecution. I was a personally name
16 defendant as well as the elected DA, the elected
17 sheriff, Commissioner Antonovich, alleging a variety of
18 conspiracy to essentially frame a defendant who I tried.
19 The case was dismissed. And his conviction was
20 eventually upheld on both state and federal appeals. I
21 have definitely drunk Crystal Head Vodka. I believe I
22 have purchased it. And I've certainly seen it
23 displayed. I have seen tequila in a bottle shaped like
24 a skull displayed. I don't know the name of it so it
25 may or may not be the tequila at issue.

1 I during college and law school was a
2 bartender. That's at least ten years in the past. I
3 have a number of friends who are or were bartenders or
4 servers, and a friend who for years worked for Miller
5 Brewing in supply chain. But he has been out of that
6 for a couple years now. And I believe that is it.

7 THE COURT: All right. Thank you, sir.

8 PROSPECTIVE JUROR: Thank you, Your Honor.

9 THE COURT: I will first ask if there are
10 follow-up questions that either side would like to have
11 the Court propound to the jury?

12 Plaintiff have any additional questions?

13 MR. BERG: No, Your Honor.

14 THE COURT: Defense? Any additional
15 inquiries?

16 MR. HUMMEL: Not for Elements.

17 THE COURT: The peremptory is with the
18 plaintiff.

19 MR. BERG: Your Honor, for the plaintiff we
20 would strike No. 7, Mr. Gross, and thank him for his
21 service.

22 THE COURT: Sir, you are excused at this
23 time. Thank you for being willing to serve. You will
24 go back to the jury office and receive instruction
25 there.

1 PROSPECTIVE JUROR: Okay.

2 THE COURT: And the clerk will select the
3 name of another juror to replace Juror No. 7.

4 THE CLERK: Lugo Viramontes,
5 V-I-R-A-M-O-N-T-E-S.

6 PROSPECTIVE JUROR: Good afternoon.

7 THE COURT: Good afternoon.

8 PROSPECTIVE JUROR: My name is Lugo
9 Viramontes. Last name V-I-R-A-M-O-N-T-E-S. I live in
10 Montebello, California. My employer's name is
11 Residential Bank Corp. And I am self-employed as a
12 mortgage consultant.

13 THE COURT: How long have you worked for
14 the bank?

15 PROSPECTIVE JUROR: I been there for
16 11 months and --

17 THE COURT: And before that?

18 PROSPECTIVE JUROR: Before that, I was with
19 another company named Jim Mortgage. And I was them for
20 over six years.

21 THE COURT: What are your duties and
22 responsibilities when you were working for the mortgage
23 company?

24 PROSPECTIVE JUROR: We are self-employed, so
25 we are just, you know, helping clients refinance or

1 purchase homes.

2 THE COURT: You may continue, sir.

3 PROSPECTIVE JUROR: Highest level of
4 education is high school. I'm single, marital status.
5 As far as adults, I do have an adult child. But he goes
6 to school. He goes to East Los Angeles College.

7 THE COURT: And does he reside in your
8 household?

9 PROSPECTIVE JUROR: Yes, he does.

10 THE COURT: All right. You may continue.

11 PROSPECTIVE JUROR: As far as hobbies,
12 basketball. No club or organizations that I'm currently
13 in. Not in the military service or ever been there.
14 And not have served in the criminal or civil case. And
15 have not been a member of a grand jury. And 15 and 16,
16 no.

17 THE COURT: And, sir, the general question
18 that I ask of the other members of panel, are there any
19 of those questions that you need to share in your
20 answer?

21 PROSPECTIVE JUROR: I did -- unfortunately,
22 I didn't write anything down.

23 THE COURT: Do you remember any of them that
24 you thought at the time that you heard it --

25 PROSPECTIVE JUROR: No.

1 THE COURT: -- that's a question that I'd
2 have to answer yes?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Have you ever been a party to a
5 lawsuit?

6 PROSPECTIVE JUROR: No.

7 THE COURT: I didn't ask this question, but
8 I will now: Have you ever had your deposition taken?

9 And so all the jurors can understand, a
10 deposition is a process where one might be questioned
11 about something of which they may be knowledgeable where
12 there is a lawsuit pending. It is done outside of
13 court. There is a court reporter generally present.
14 The person is under oath. And sometimes that testimony
15 may be used at trial.

16 So with that explanation, have you ever had
17 your deposition taken?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Sir, approximately when and on
20 how many occasions?

21 PROSPECTIVE JUROR: It was one occasion
22 about 15 years ago.

23 THE COURT: Were you examined, if you can
24 recall, by attorneys on both sides of the case?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: And how would you describe just
2 the conduct or the demeanor of those lawyers,
3 professional, unprofessional; what did you think?

4 PROSPECTIVE JUROR: They were professional.

5 THE COURT: Sir, I asked some question about
6 copyright -- strike that.

7 Trademarks. Do you know anyone who owns a
8 registered or unregistered trademark or trade dress?

9 PROSPECTIVE JUROR: No.

10 THE COURT: Have you ever worked in the
11 alcoholic industry?

12 PROSPECTIVE JUROR: No, I haven't.

13 THE COURT: Have you ever seen Crystal Head
14 Vodka or KAH Tequila displayed in a restaurant or bar,
15 to your knowledge?

16 PROSPECTIVE JUROR: I might have. But I did
17 not recognize it as a skull head vodka or tequila.
18 Probably seen it once or twice.

19 THE COURT: Have you ever purchased or
20 consumed Crystal Head Vodka or KAH Tequila?

21 PROSPECTIVE JUROR: No, I haven't.

22 THE COURT: Do you recognize any of the
23 names of those who may testify as witnesses in the case
24 or they may be mentioned during the course of the trial?

25 PROSPECTIVE JUROR: Yes. Just Dan Aykroyd.

1 THE COURT: So why do you recognize that
2 name?

3 PROSPECTIVE JUROR: From movies that I seen
4 him in.

5 THE COURT: And can you remember now the
6 last movie that you might have seen him in? If you
7 can't, that's fine. Do you remember the last --

8 PROSPECTIVE JUROR: Yeah. Ghost Busters,
9 top of my head.

10 THE COURT: The fact that he is an
11 entertainer or you may have seen him in a movie, do you
12 believe that would influence your decision here just
13 because of his occupation as you make decisions based
14 upon the evidence that's presented?

15 PROSPECTIVE JUROR: No.

16 THE COURT: And the companies, the plaintiff
17 and defendant in this lawsuit, did you recognize those
18 names as any entities that you might know or individuals
19 that you might know?

20 PROSPECTIVE JUROR: No, I do not.

21 THE COURT: And the lawyers in the case,
22 they introduced themselves. You recognize any of them
23 as someone that you might know?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Do you feel you could be fair

1 and impartial to both sides if you were selected to
2 serve as a juror in the case?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: All right. Thank you, sir.

5 Are there follow-up questions that
6 plaintiffs' counsel would like me to ask?

7 MS. BIVENS: Yes, Your Honor.

8 THE COURT: What is the question, if you can
9 identify it by number? Or if you just want to tell me
10 what it is.

11 MS. BIVENS: I'll just tell you. If juror
12 number --

13 THE COURT: I'm only talking about the last
14 juror to be seated.

15 MS. BIVENS: 7.

16 THE COURT: Juror No. 7.

17 MS. BIVENS: Has he ever supervised anybody,
18 and does he have any certifications related to his
19 current employment?

20 THE COURT: Sir, have you ever worked in the
21 capacity of a supervisor?

22 PROSPECTIVE JUROR: Yes, I have. Probably
23 just managed five people. Not in the last five years.

24 THE COURT: And when you managed those five
25 people, how long ago was that?

1 PROSPECTIVE JUROR: Over five years ago.

2 THE COURT: And what was your role in
3 managing? Did you have input into their performance
4 evaluations?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Did you have any input before
7 they were hired?

8 PROSPECTIVE JUROR: No.

9 THE COURT: Did you participate in any of
10 the interviews?

11 PROSPECTIVE JUROR: No.

12 THE COURT: And if you felt that they should
13 no longer continue working in that capacity, if that
14 situation ever occurred, did you have any input there?

15 PROSPECTIVE JUROR: No.

16 THE COURT: Sir, do you hold any
17 certifications or licenses based on the type of work
18 that you do now or that you have done in the past?

19 PROSPECTIVE JUROR: No.

20 THE COURT: So I understand that you are
21 assisting people in trying to buy homes?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: So do you describe yourself as
24 an agent or broker or --

25 PROSPECTIVE JUROR: No. I work for

1 Residential Bank Corp. who they hold the license. And I
2 just work under them.

3 THE COURT: Could you just explain typically
4 what would happen? Someone comes in, they want
5 financing so they can buy a home.

6 PROSPECTIVE JUROR: We take an application,
7 and we process the loan internally.

8 THE COURT: What would your role be? Would
9 you be interviewing that person?

10 PROSPECTIVE JUROR: Yes, interviewing.

11 THE COURT: Would you be looking over the
12 financial information that's been provided?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Thank you, sir.

15 Any additional questions either from the
16 plaintiff or the defendant?

17 MR. HUMMEL: Not from our side, Your Honor.

18 THE COURT: Plaintiff had something more?

19 MS. BIVENS: Yes, Your Honor. I would like
20 to know if his employment involved any federal
21 regulations or is it governed by any rules?

22 THE COURT: So, sir, the company that you
23 work for, does that company hold some type of a license?

24 PROSPECTIVE JUROR: Oh, yes, they did. They
25 have an MLS license.

1 THE COURT: And what does that stand for?

2 PROSPECTIVE JUROR: For National
3 Association -- I can't think about it right now. I'm
4 nervous.

5 THE COURT: Are there any regulations that
6 you are aware of that you have to consider when you are
7 either passing upon whether one qualifies for a loan --

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: -- or assisting them in any
10 other way?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: What are these regulations that
13 you are usually aware of and implementing as you assist?

14 PROSPECTIVE JUROR: You know, ethics and
15 rules, you know, whatever. A lot of rules and
16 regulations, ethics. And I can't think of any right
17 now.

18 THE COURT: But are those regulations things
19 that you have a copy of on your desk?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: You may consult them from time
22 to time?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: I think you said you do assist
25 in evaluating financial background of persons who wish

1 to buy homes?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Are there forms that you fill
4 out for that purpose?

5 PROSPECTIVE JUROR: Yes, there are.

6 THE COURT: Do those forms identify some
7 regulations that you have to consider when you are
8 filling out the forms?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: And then you would consult those
11 regulations?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Thank you, sir.

14 Is there more inquiry?

15 MS. BIVENS: No, Your Honor.

16 THE COURT: Anything from the defense?

17 MR. HUMMEL: No, I don't have any.

18 THE COURT: You may be seated, sir.

19 So the peremptory is with the defense.

20 I should ask: Both sides pass for cause as
21 to this juror? Pass for cause.

22 MR. BERG: No challenge for cause.

23 THE COURT: Pass for cause.

24 MR. HUMMEL: Pass for cause.

25 THE COURT: Pass for cause, thank you. So

1 peremptory is with the defense.

2 MR. HUMMEL: Keith Hummel, Your Honor. The
3 defense side would ask that you excuse and thank Juror
4 No. 3, Mr. Vasandani.

5 THE COURT: You are excused at this time.
6 We appreciate your willingness to serve. And you'll
7 report back to the jury office for further instruction.

8 THE CLERK: Richard Allen Flier, F-L-I-E-R.

9 THE COURT: Sir, would you state your name
10 for the record.

11 PROSPECTIVE JUROR: Hi. It's Richard Allen
12 Flier, Jr.

13 THE COURT: If you could answer the
14 questions on the individual voir dire.

15 PROSPECTIVE JUROR: Of course. Gave you my
16 name. I live in Hollywood. My employer's name is
17 Digital Domain. And that's a large visual effect
18 company for feature film and commercials. I handle
19 business development and have handled commercials there.
20 I have been there for the last six years. So working
21 with -- I manage people. Supervisor capacity. Small
22 teams, probably around five to ten. I have a BA. I am
23 married. There is one other adult besides me in my
24 house, that is my wife. No adult children. I do not
25 belong to any organizations. No military service. I

1 have served as a juror, not on a grand jury. And --
2 yeah.

3 THE COURT: Let's me follow up a bit. So
4 does your spouse work outside the home?

5 PROSPECTIVE JUROR: She is not working
6 currently.

7 THE COURT: And on how many occasions have
8 you served as a juror.

9 PROSPECTIVE JUROR: Just one.

10 THE COURT: How long ago was it?

11 PROSPECTIVE JUROR: I would say it was about
12 eight years ago.

13 THE COURT: Were you one of the deliberating
14 jurors?

15 PROSPECTIVE JUROR: I was.

16 THE COURT: Did the jury reach a verdict?

17 PROSPECTIVE JUROR: They did.

18 THE COURT: What was the nature of the case
19 if you can recall?

20 PROSPECTIVE JUROR: It was a drunk driving
21 case.

22 THE COURT: How would you describe the
23 experience of being a juror?

24 PROSPECTIVE JUROR: Part of it was
25 rewarding. The case was a confusing and difficult case.

1 And in some cases unnecessary. But we did it.

2 THE COURT: Sir, the general questions that
3 I ask of members of the panel, are there any that you
4 need to share your answers so we could better
5 understand?

6 PROSPECTIVE JUROR: Aside from knowing one
7 of the names, Dan Aykroyd, which will not affect my
8 opinions, I am familiar with both brands, and their
9 packaging systems, and know what they look like. I own
10 the tequila. Couple times over now. Other than that,
11 nothing.

12 THE COURT: Sir, how is it that you are
13 familiar with the packaging of both brands?

14 PROSPECTIVE JUROR: I have seen them many
15 times when purchasing liquor or at retail.

16 THE COURT: And have you seen any of the
17 television, radio coverage, movies in which the witness
18 that you've identified that you have at least heard that
19 name might have been a part of?

20 PROSPECTIVE JUROR: Yes, of course.

21 THE COURT: And what can you recall in terms
22 of the last time that you either heard or saw something
23 about this witness?

24 PROSPECTIVE JUROR: A couple weeks ago I
25 introduced my children to the Ghost Busters in a

1 marathon session. Very rewarding.

2 THE COURT: How much time?

3 PROSPECTIVE JUROR: They watched it twice
4 each. I can only handle twice -- I mean one each.

5 THE COURT: And the fact that you watched
6 that movie, and saw someone who may be a witness in the
7 case, are you concerned at all that that may influence
8 your ability to decide --

9 PROSPECTIVE JUROR: I don't think so.

10 THE COURT: -- any of the issues?

11 PROSPECTIVE JUROR: I don't think so.

12 THE COURT: Do you think you could be fair
13 and impartial to both sides?

14 PROSPECTIVE JUROR: I think so.

15 THE COURT: Do you think you could use the
16 same standard in evaluating the testimony of all
17 witnesses, whatever that standard may be for you,
18 regardless of their occupations?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: All right. Thank you.

21 PROSPECTIVE JUROR: I do have a professional
22 hardship in schedule -- a potential hardship that I
23 would like to discuss.

24 THE COURT: Why don't you come so we can
25 discuss that.

1 (SIDEBAR.)

2 THE COURT: Use the mic. So just state your
3 name.

4 PROSPECTIVE JUROR: Richard A. Flier.

5 THE COURT: Sir, tell me about the hardship.

6 PROSPECTIVE JUROR: The hardship is my
7 company does not compensate for jury duty. So during
8 the schedule that you listed I will not be compensated
9 for any days that I miss.

10 THE COURT: So they don't compensate for any
11 amount?

12 PROSPECTIVE JUROR: Zero. Not one.

13 THE COURT: Any other hardship?

14 PROSPECTIVE JUROR: The schedule -- how you
15 describe it might run over to three, four, weeks.

16 THE COURT: I don't think I mentioned week.
17 I said it could go -- it could go into April. But that
18 would probably be because the jury is still
19 deliberating.

20 PROSPECTIVE JUROR: Understood.

21 THE COURT: That's just something that's
22 possible.

23 PROSPECTIVE JUROR: My job is mostly out of
24 country in Asia. I have to be in Asia in April. First
25 week of April.

1 THE COURT: Leaving.

2 PROSPECTIVE JUROR: April 2nd.

3 THE COURT: How long would you be gone?

4 PROSPECTIVE JUROR: Potentially a full
5 month.

6 THE COURT: All right. Anything else?

7 PROSPECTIVE JUROR: That's it.

8 THE COURT: Okay. Unless there is some
9 inquiry.

10 MR. CASTORIA: No inquiry.

11 THE COURT: Plaintiff counsel have
12 something?

13 MR. BERG: Just a couple questions.

14 PROSPECTIVE JUROR: Sure.

15 THE COURT: Direct those to the clerk.

16 MR. BERG: Of course. He mentioned --
17 Mr. Flier mentioned that he would be in Asia during
18 April. Does he know the exact dates? And has it been
19 preplanned?

20 THE COURT: I think he said he expects to
21 travel on April 2nd.

22 PROSPECTIVE JUROR: 1st or 2nd.

23 THE COURT: And it is a business trip?

24 PROSPECTIVE JUROR: My company is based out
25 of Hong Kong. And most of my work is out of Asia. I

1 can --

2 THE COURT: Except the fact that it is
3 business related, and is it something that you could
4 change?

5 PROSPECTIVE JUROR: It is out of my control,
6 the dates. It is for an event.

7 THE COURT: If this jury was still
8 deliberating still on April 1st, you would be at that
9 point asking that the case be continued until May or
10 that you be excused?

11 PROSPECTIVE JUROR: Correct.

12 THE COURT: Thank you. You may go back to
13 the box.

14 THE COURT: I wouldn't excuse for the
15 hardship because we have too many jurors, even law
16 firms, that don't pay for jury service or restrict the
17 amount of pay. I just don't know if it is realistic to
18 think that we would be either presenting evidence in
19 April or if we complete the case by the end of March.
20 Is it realistic to think the jury could even be
21 deliberating in April? Just wondering if you had any
22 concerns about that?

23 MR. HUMMEL: I don't know. I can't conceive
24 of us doing anything in April in this case. That would
25 be remarkable.

1 THE COURT: Okay.

2 MR. MILLER: I agree with that.

3 THE COURT: Sorry.

4 MR. BERG: We agree with that.

5 THE COURT: Yes. I usually try to give more
6 time than less time because I just don't want to have
7 jurors asking to leave. So okay. I won't excuse him at
8 this point.

9 MR. HUMMEL: Okay. Your Honor.

10 MS. BIVENS: Thank you, Your Honor.

11 (SIDEBAR CONCLUDED.)

12 THE COURT: So we can go back on the record.
13 I don't know if that was the air
14 conditioning going off or just the noise that I heard.
15 But at least it is indication to me that it is time to
16 have a short break.

17 So we'll be in recess just for about
18 15 minutes.

19 Just so you can stretch your legs, take care
20 of personal needs, and then report back to the courtroom
21 no later than 4:15.

22 Jurors are excused for 15 minutes.

23 THE CLERK: Please rise. This Court is in
24 recess.

25 THE COURT: Just before counsel take your

1 break, just wanted to address, you each have two
2 additional challenges per side. I am hoping that we
3 will get the jury selected today. If we accomplish
4 that, I don't know that we would have time for opening
5 statements today. But if not, we would do that first
6 thing tomorrow morning.

7 But this morning when we -- or around noon
8 when we recessed for lunch there was some question as to
9 how long you would have.

10 So if I did not impose a time limit, then
11 this is the time to do so, if necessary. So I would
12 just ask both sides: How much time was plaintiff hoping
13 to have for your opening?

14 MR. BERG: What I was hoping to have, Your
15 Honor?

16 THE COURT: Yes.

17 MR. BERG: The 20 minutes you said we could
18 have.

19 THE COURT: For the defense, do you think
20 you could make your opening within 20 minutes?

21 MR. HUMMEL: I believe that collectively for
22 both of us, I think we can do 20 minutes.

23 THE COURT: Do you have any preference -- so
24 if the jury returns and we're able to administer the
25 oath, we have our panel. There would be time left for

1 the opening. But any preference you prefer doing it
2 first thing tomorrow morning or does it matter? We can
3 do it either way.

4 MR. BERG: I would prefer to do it tomorrow
5 morning when we are fresh and they are too, Your Honor.

6 MR. MILLER: They've been here since 7:00.
7 They've put in nine hours already.

8 THE COURT: It is likely that what we will
9 do is get the jury, admonish them, excuse them, and then
10 I will discuss with counsel any outstanding matters that
11 need to be addressed.

12 So take your break now so we have about
13 15 minutes.

14 (BREAK TAKEN.)
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